

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TYRONE GUINN,

Petitioner,

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)
)
ID NO. 07-025

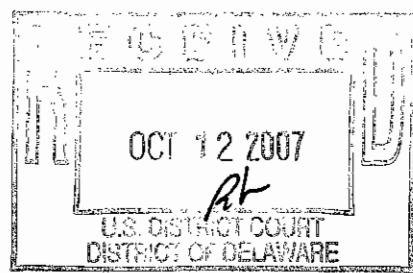
v.

STATE OF DELAWARE,

Respondents.)
)
)
)

BRIEF and Arguments
in
separate Memorandum

DATE: , 2007



Judge
copy

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ARGUMENT

(I). THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DENIED GINN'S MOTION FOR JUDGMENT OF ACQUITTAL ON ASSAULT IN A DETENTION FACILITY, ALLEGED IN COUNT I OF THE INDICTMENT, AS THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE THAT GUINN INTENDED TO STRIKE OFFICER SHANNON WITH BODILY FLUID.....	6
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(II). The sole basis for this petition, Petitioner assertion that The Trial Court errored in refusing to grant a hearing on whether Appellant's / The Defendant was denied his right to "effective assistance of counsel," granted by the six Amendment of the United States Constitution during the stages of his trial when counsel filed to subpoena and cross-exam defendant witness, pursuant to his "pretrial alibi notice;" and further ineffective on his appeal by failing to follow Rule 26 (A)(1)(C)(i), (A)(B)(i), (D)(iii) of the Del. Supr. Ct. R. 26. (2007)

CASE(S) :

- LIMITATIONS -

- MORE CASE(S) Continue. -

Rules: DEL. ST. S Ct Rule 26# (2007) 23.
class D# Felony II D.C. S 1254 (C). . . . 16.

NATURE AND STAGE OF PROCEEDINGS

Tyrone Guinn was charged with three counts of Assault in a Detention Facility. (A-4, 5). Counts I and II involved the throwing of bodily fluid on two correction officers. (*id.*) The third count alleged Guinn caused injury to a correction officer. (*id.*) At a jury trial, upon conclusion of the State's evidence, Guinn moved for a judgment of acquittal on all counts. (A-26, 27). The trial court denied this motion as to Counts I and II holding, specific intent may be inferred from the proximity of the guards to Inmate Hill and the nature of the conduct itself. (A-27). The court also denied the motion as to Count III.

At the conclusion of trial, the jury returned a verdict of "guilty" on Count I and "not guilty" on Count III. They were "hung" on Count II and inadvertently informed the Court of their vote which was in favor of the defendant. The Court entered "not guilty" on that count. (A-2).

On July 1, 2005, Guinn was sentenced on Count I to 8 years at Level V suspended after 3 years for 3 years at Level IV suspended after one year for two years Level 3.

This is Defendant's opening brief in support of his petition.^{SEE}

SUMMARY OF ARGUMENT

1. The trial court erred as a matter of law when it denied Guinn's Motion for Judgment of Acquittal on Assault in a Detention Facility, alleged in Count I of the indictment, as the State failed to present sufficient evidence that Guinn intended to strike Officer Shannon with bodily fluid.
2. THE Sole basis For this Petition, Petitioner assertion That the Trial court erred in Refusing to Grant a hearing on whether Appellants / the defendant was Denied his right to "EFFECTive assistance of counsel," Granted BY the sixth Amendment of the unites States Constitution Durning the stages of his trial when Counsel Filed to SUPOENA and cross-exam Defendant witness, Pursuant to his "Pretrial alibi Notice," and further ineffective on his APPEAL BY failin to Follow Rule 26 (A)(i) (C)(i), (A)(B) (iii) of the Del. SUPR. Ct R 26. (2007).

FACTS

In the summer of 2004, nineteen-year-old Tyrone Guinn was detained in super-maximum security at Delaware Correctional Center. On June 30th, 2004, while Guinn was in a recreation yard that resembled a "dog kennel cage," (A-7, 20), Officers Shannon and Stevens escorted Inmate Hill past the yard to the shower. (A-8). Shannon was on Inmate Hill's right, closest to the yard, and Stevens was directly behind Shannon. (A-17, 22).

According to Shannon and Stevens, Guinn and Hill "exchanged some words," (A-8), then Shannon "turn[ed] forward, and just that fast [Shannon] heard just like a splash and [he] was drenched [by fluid]." (A-8). Stevens was also hit by the fluid. (A-15). No one saw who threw it, (A-9, 10, 15-17), nor were any of the officers able to positively identify what container was used to "launch" the fluid. (A-10, 15, 21). Since Guinn was the only one in the yard, he was presumed to be the one responsible. (A-8). According to both Stevens and Shannon, the fluid appeared to be a mixture of feces, urine and other substances. (A-8, 13).

Both Shannon and Stevens testified that they had never had any problems with Inmate Guinn. (A-14, 17). Further, they were both new to the tier so they could not testify as

to whether there was any "bad blood" between Guinn and Hill. (A-10, 14, 19). Shannon wrote in his incident report and testified at trial that Guinn threw liquid at Inmate Hill, (A-11, 13), and that he [Shannon] was not the intended victim (A-11, 12). Stevens also put in his incident report that the fluid was thrown "toward Inmate Hill." (A-17, 18). But, when asked specifically, Stevens testified he did not know who Guinn was trying to hit. (A-17).

After securing Inmate Hill, officers took Guinn out of the yard and placed him in his cell. While the State alleged Guinn intentionally injured Stevens during a struggle, the jury found him "not guilty" of that charge. (A-2). Sergeant Phillips was the supervising officer and obtained information from the officers. He testified that Stevens told him that Guinn had thrown the fluid at Inmate Hill. (A-22, 23). Later that day, Guinn was placed in isolation for 15 days without a hearing. (A-23, 24).

FACT

(I) ON 5/5/05 COUNSEL SENT SUBPENA(S) TO WITNESS BY MAIL (SEE EXHIBIT A-2) (SUPERIOR COURT CRIMINAL DOCKET). ALSO COUNSEL SENT DEFENDANT LEGAL MAIL, IN RESPONSE TO HIS COMPLAINT, STATING: SHE HAD ISSUED HIS WITNESS WITH SUBPENA(S) (SEE EXHIBIT D*). BUT DURING DEFENDANT TRIAL, SHE FAILED TO CROSS-EXAM THEM BEFORE THE COURT AFTER THOSE HAD ARRIVED TO TESTIFY ON DEFENDANT BEHALF ON 5/19/05.

(II) ON 5/20/05 DEFENDANT WAS FOUND NOT GUILTY ON (I) COUNTS OF ASSAULT IN DET. FACILITY BUT FOUND GUILTY ON (I.) COUNT. DEFENDANT WAS CONVICTED AND SENTENCED ON 7/1/05. ON 7/13/05 DEFENDANT COUNSEL FILED A TIMELY NOTICE OF APPEAL TO THE SUPREME COURT OF APPEALS, IN LATER WITHOUT NOTICE TO THE DEFENDANT, COUNSEL THEN FILED DEFENDANT APPEAL BRIEF'S ON 8/25/05 AND SENT DEFENDANT HIS COPY OF THE BRIEF APPENDIX ON 10/23/05. WITHOUT FOLLOWING RULE C(i)(A)(B)(iii) (SEE EXHIBIT B-1). SO DEFENDANT HAD NO CHOICE BUT TO FILE A MOTION REQUESTING TO PROCEED PRO SE PURSUANT TO RULE 26 (d)(ii) ON OCT. 18, 2005 BECAUSE OF COUNSEL INEFFECTIVE ASSISTANCE OF COUNSEL (SEE EXHIBIT B-1). AND WAS COMPLETELY IGNORED BY THE SUPREME COURT WITHOUT A NOTICE TO RE-FILE SUCH MOTION BECAUSE THERE WAS NO PROOF OF SERVICE. DEFENDANT COUNSEL THEN FILED APPELLANT REPLY BRIEF ON DEC. 05 2005 AGAIN WITHOUT DEFENDANT NOTICE. COUNSEL VIOLATED RULE 26# C(i) (B)(iii), AND ON 2/28/06 DEFENDANT WAS AFFIRMED ON HIS APPEAL IN THE SUPREME COURT. (SEE EXHIBIT B-2).

I. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DENIED GUINN'S MOTION FOR JUDGMENT OF ACQUITTAL ON ASSAULT IN A DETENTION FACILITY, ALLEGED IN COUNT I OF THE INDICTMENT, AS THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE THAT GUINN INTENDED TO STRIKE OFFICER SHANNON WITH BODILY FLUID.

Standard and Scope of Review

Whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond reasonable doubt. *Davis v. State*, 706 A.2d 523, 524 (Del. 1998); *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995).

Argument

Concealed with Jar etc.

There were two Type of Evidence from which the Jury could find the facts of Defendant(s) case, one was the direct evidence, from testimony of an eyewitness, the other indirect. Contrary to the State's contention, no witness in this case could positively identify what container was used to "Launch" the Fluid that they such claim (see A[#]10,15&1). Fact, Neil Steven Claim in his testimony that Defendant Had a Container in his hand, But Durn his Testimony he was in even sure what TYPE OF Jar it was hem Salt (A[#]18). First he indicated it was a Peanut Butter Container OR maybe a Juice container and when asked what size it was, he still was not even sure (A[#]15). Then Finally he was not able to present sufficient evidence that if there was ever a such thing in Mr. Guinn hand from the Begian on (A[#]19) Thats Required BY DRE Rule 901(A); also see (Whitfield v. State DEL. Supr. Ct., 524 A.2d 13,16.) (where, state had failed to adequately trace continuous whereabouts of admitted shotgun of Robbery, so as to satisfy Authentication Requirements;) as far as we know, he could had given false untrustworthy testimony, simply because he had lies on hem, and Farther upset he never saw who struck hem, (A[#]11) so he Testified he saw Mr. Guinn with a Jar etc. in his hand after the incident, when cross-examined BY

Defendant counsel, was he upset the fecies had land on him, he stated:

"not at the time Because he had no idea it was on him until he looked afterward after the incident (A-18)"

in Shannon testimony he claims it was a small Peanut Butter cup laying on the floor Thats giving to the inmates. (see #A-10)

Then in (2) David P. Testimony he claims it was a milk carton That was on the floor at the incident scene (A-21) But again, still theres no such sufficient evidence to conclude that there was ever a such thing in the beginning. The state was required to adequately trace it's continuous whereabouts of the alleged jar etc. That each state witness claimed defendant had from the time of the crime or sufficiently link the claim "jar etc" to defendant, or again to the scene of the assault, see Rule 901 (A) That clearly states:

"The Requirement of Authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

The state has failed to Authenticate the claims

and establish a "chain of custody; which indirectly establishes the identity and integrity of the evidence by tracing it's continuous whereabouts!!

State failed to present circumstantial evidence, That is, The proof of the fact or circumstances from which the existence and non-existances of other facts that may reasonably be inferred, nor evidence to show that the alleged, for etc. Shared a unique trait, nor a Direct Link was established Between Mr. Guinn and the alleged weapon such as Finger Print evidence. This such claim does not meet the Requirements under D.R.E 901 (A) Authentication or Identification Rule, "It's Just not there".

Assault on officer Shannon

None of The state witness saw Mr. Guinn throw The Liquid Feces ^{see} **(A-Exhibits)** In Fact, They were not even sure what type of container was used to "Launch" The Fluid, **(A-10,15,21)**. Thus no inference can be drawn with respect to whether it was thrown Aimlessly, Directed at Inmate Hill, Directed at the Officers or aimed at some other target.

Example, Durn Mr. Shannon Testimony he stated he was struck while walkin pass inmate Guinn in Rec yard 2# **(A-10)**. Thats also Directly Across Mr. Guinn cell 9# up the Hallway **(A-8)** But later Durn his Testimony he indicated, he was struck across his Back, and all across The Back of his Shirt **(A-8)**. Thus when cross-exam BY MS. Van Dyke, could he describe the hallway?

"The Floors and Door around 3 or 4 where covered in Fecies" see **(A-9)**

If he had been struck on the Right side in close proximity from Mr. Guinn that was in Rec. yard 2#, That's Directly across from his cell, where this had acured accordin to Mr. Shannon **(A-10)**, he and only The Cell walls and floors around that Area Cell 9# would Be covered in the fecies, and not Cells 3 or 4, somewhere else Down the NarroL Hallway. The only way fecies could had land on

The Cell(s) 3 or 4 AND walls Down the Hallway, If someone struck hem "Directly From Behind" Farther up The Hallway, Bringing there Arm, hand out The Cell Door, or Food Flap the oppisit way he was walkin, makin The Fecies Strike his Back, The Back of his head, walks, and anywhere else Down the hallway, ~~IN~~ Clued in Cells 3 & 4 in The Fence, Simply Because he was closes to it. (A-#9)
 Also Durn Mr. Shannon Testimony, he indicated hem Said That, he was Struck on his Back, and Back pants Durn Cross-examination BY defendant Counsel (A-#108), and Durn Sgt. Phillips testimony he indicated That when he saw Shannon he simply had Fecies Drippin Down from the Back of his head onto his clothin (A-#20). Then he went on to say:

"Steven had it also on the Backside of his pants Leg (A- #20)." But Since Mr. Guinn was the only one in the yard he was presumed to Be The one Responsible. When ask Durn examination BY state Attorney: "was there any openins on the Cell Tier That The Fecies might would of Came From" (A-#9) only Officer Shannon Responed on the Behave of The Cell Doors without Acknowledin The fact That: There were also Food Flaps Apart of The Cell Where the inmates Recive Meals Through, Thats Also Located next to every cell door That Could

had been simply still left open from dinner or before rec. That was not properly secured by an officer when the assault had occurred (see A-#9). Fact, when officer testified, neither officer acknowledged the concept that there were food flaps next to each cell. There is a great possibility that it could have been simply one still left open either from dinner or before rec, or not properly secured by an officer when the assault had occurred on officer Shannon.

As far as we know, it could of been pick open by an inmate that was intentionally seeking revenge on the both of them. Farther, while cross-examined by the same question, Mr. Shannon indicated:

"There were no openings just steel iron doors, and there's probably like a vent hole at the bottom of the doors, but nothing to reach out or grab anything."

(A-#9) This is completely upset, the lower part of the door does not have any vent holes, and farther the lower part of the door is about 4 to 5 inches on both sides of the cell doors where you can easily stick your hand through and throw anything of that size out. (See state exhibit 1* and 2*). example! Durn Mr. Phillips testimony he stated: "There was also a lot of fecies by the door track and under the door track. See (A-#10).

Durn Trial officer Shannon indicated, That inmate Quinn had exchanged some words with inmate Hill, in he Thought Thay was havin a Conversation or whatever; and as HE was walkin he was struck with Fecies. (A-#8) But Durn mr. Shannon testimony he nevered indicated nor mr. Stevens, That The Conver-
sation That Both inmates were havin at the time, Before the crime was committed was a Verble Threatening argument nor anything of That nature to suspect probable cause towards the Both had any Problems with each other whatsoever. (A-#8). as Far as we know, They Both Could had Been Sharrin a BRIEF conversation Durn when the Fecies was Simply Thown on officer Shannon. Thus Both officers was new to the Fair so Thay Could not Testify as to whether there was any Bad Blood Betweern Them two (see A#14) also see connecticut V. Carpenter, 570 A.2d At 206 (conn. 1990),
farther, There were no previous encounters Betweern either of the officers and Quinn (A-#14) State V. Gathlin, 129 So. 2d 4 (LA. 1961), Thus there was no evidence of motive to hit Shannon or of a Pattern of adverze behavior toward the officers (see A#17-A#18).

Judgement of Acquittal

Finally, The Jury's irrational and inconsistent Verdicts amplify the Trial Court Judge error in denying Guinn motion. Guinn was found "guilty" of Count I, Intentionally striking officer Shannon with Bodily fluid. (A-2). However, the Jury was "hung" on Count II which alleged Guinn intended to strike officer Stevens with bodily fluid. (A-2). The Jury inadvertently Revealed to the Court their vote on Count II, which favored the defendant. Thus, The court entered a verdict of "no guilty" on that count without objection by the state. (A-2). The verdicts on Counts I and II demonstrate confusion on the part of the Jurors with respect to applying the state's insufficient evidence to the law of specific intent. Specific intent was not supported in this case, thus it was "error to submit it to the jury as if the evidence justified the determination of the presence of that element." (see Connecticut v. Carpenter 570 A.2d 203, 206 (Conn. 1990). Therefore, a Judgement of acquittal was Required to Prevent an irrational and inconsistent verdict. (see Kornegay v. State, 596 A.2d 481, 487 (Del. 1991)). assault in a Detention Facility as alleged in Count I, of the indictment is Defined in: 11 DC, § 1254(C). See also monroe V. State 652 A.2d 560 (DEL. SUPR. 1993). (When appellate court overturns Jury's guilty verdict on insufficiency of evidence grounds, Double Jeopardy Clause br United States

and State Constitution bar Retrial." (Burks v. United States, 437 U.S. 1, 11, 18, 98 S. Ct., 2141, 2147, 2150-51, 57 L. ED. 2d 1 (1978)).

The State Failed to prove every element of Count I, "Assault In a Detention Facility beyond Reasonable doubt. See IN Re Winship, 391 U.S., 358, 364 (1970). Because of The State's Failure, The Trial Court Should have Granted Guinn's motion For Judgment of Acquittal. Therefore, Guinn's Conviction and Sentence Should Be Reversed.

(BRiFE /opining)

ordinarily, intent is a question for the trier of fact. However, specific intent was not supported in this case. Thus it was "error to submit it to the Jury as if the evidence justified the determination of the presence of that element." Therefore, a Judgement of Acquittal was required to prevent an "IRRATIONAL and INCONSISTENT Verdicts".

Assault in a Detention Facility as alleged in Count I* of the indictment is defined as follow: "Any Person who, being Confined in a detention facility, intentionally strikes with Urine, Feces or other bodily Fluid a Correctional Officer or other State employee of a Detention Facility acting in the lawful performance of Duties or any other person at a detention Facility or other place having Custody of such person, other than another person confined at a Detention Facility shall be guilty of a Class D Felony." 11 D.C. § 1254 (C). The State originally sought to convict Guinn on Count I under the Theory of Transferred Intent, Relying on evidence that Guinn intended to strike inmate Hill but hit Officer Shannon instead. (A#26, #27). However, The Court Ruled that it was "pretty clear" that Transferred intent can not "Escalate and add a new element to a Charge" of offensive touching to prove assault.

in a Detention Facility (A-25[#]). Thus, The State was Required to establish "an intentional striking of a Correctional officer see e.g., Kornegay, 596 A.2d 481; notwithstanding the Courts finding that Assault in a Detention Facility is a specific intent offense, (A-25[#]) The Trial Court denied Guinn motion (A-27[#]). all Testimony Presented in the State's case was Consistant with Finding no intent to hit a Correctional officer there was "no evidence or any kind which would show, or support the Conclusion of a Reasonable mind that [he] harbored the Requisite Specified Intent [to hit officer Shannon].

- SEPARATE MEMORANDUM -
BRIEF / ARGUMENT

IT'S BEEN WELL SETTLED:

Federal Courts may not consider the merits or procedurally defaulted claims unless the petitioner demonstrate either cause for the procedural default and actual prejudice resulting therefrom, or that a fundamental miscarriage of justice will result if the court does not review the claim. *mc Candless v. Vaughn*, 172 F. 3d 255, 260 (3d Cir. 1999); *Coleman v. Thompson*, 501 U.S. 722, 750-51 (1999); *Caswell v. Ryan*, 953 F. 2d 853, 861-62 (3d Cir. 1992).

To demonstrate cause for a procedural default, a petitioner must show that "some objective factor external to the defense impeded counsel's efforts to comply with the state's procedural rule." *Murry v. Carrier*, 477 U.S. 478, 488 (1986). A petitioner can demonstrate actual prejudice by showing "not merely that the errors at... trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions".

Alternatively, a Federal Court may excuse a procedural default if the petitioner demonstrates that failure to review the claim will result in a fundamental miscarriage of justice. *Edwards v. Carpenter*, 529 U.S. 446, 451 (2000); *Wenger v. Frank*, 266 F. 3d 218, 224 (3d Cir. 2001). In order to demonstrate a "constitutional violation has probably resulted in the conviction of one who is actual

innocence means factual innocence, not legal insufficiency. Bonsley v. United States, 523 U.S. 614, 623 (1998). A petitioner establishes actual innocence by proving that no reasonable juror would have voted to find him guilty beyond a reasonable doubt. Sweger v. Chesney 294 F.3d 506, 522-24 (3d Cir. 2002).

II. The sole basis for this Petition, Petitioner assertion that the trial court erred in refusing to grant a hearing on whether Appellants / the Defendant was denied his right to "EFFECTIVE ASSISTANCE OF COUNSEL", granted by the Sixth Amendment of the United States Constitution DURING the stages of his trial when Counsel filed to subpoena and cross-examine Defendant witness, pursuant to His "PRETRIAL ALIBI NOTICE" and further INEFFECTIVE ON HIS APPEAL BY FAILING TO FOLLOW Rule 26(a)(d) (c)(i), (A)(B)(iii), 6(iii) OF THE DEL. SUPR. Ct R 26. (2007).

ARGUMENT

21[#]

IT IS well settled IN, To establish INEFFECTIVENESS FOR FAILURE TO CALL WITNESS, defendant must establish THAT: (1) witness existed; (2) witness was available; (3) COUNSEL WAS INFORMED OF EXISTENCE OF WITNESS OR COUNSEL SHOULD OTHERWISE HAVE KNOWN OF HIM; (4) witness was prepared to cooperate and testify for defendant at trial; and (5) absence of testimony prejudiced defendant so as to deny him FAIR TRIAL. U.S.C.A CONST. (See also Commonwealth v. Petras, 368 PA. SUPER. 372, 534 A.2d 483 (1987)).

IN THIS CASE BEFORE THE COURT IS, COUNSEL WAS INFORMED OF DEFENDANT'S EXISTENCE OF WITNESS ON MARCH 16, 2005 AND HAD HIS WITNESS INTERVIEWED BY HER INVESTIGATOR; IN FACT, COUNSEL ALSO INDICATED THAT SHE HAD ISSUED THE APPROPRIATE SUBPOENAS IN HER RESPONSE LETTER TO DEFENDANT COMPLAINT CORRESPONDENCE LETTER (SEE EXHIBIT D*). FURTHER, COUNSEL HAD NOTICE OF DEFENDANT'S EXISTED WITNESSES, SHE SUBPOENAED WITNESSES:

- (I) DEVAN MILL'S SBT: 00192524
- (II) ERNEST HILL SBT: 350002

BY MAIL, ALSO ON 5/5/05 (SEE A-2, SUPERIOR COURT CRIMINAL DOCKET) ON 5/19/05 WITNESSES (I) AND (II) WAS PREPARED TO COOPERATE AND TESTIFY FOR DEFENDANT AT TRIAL. DEFENDANT COUNSEL LATER INDICATED TO DEFENDANT DURING THE PROCEEDINGS OF TRIAL THAT HIS WITNESSES WILL BE CALLED AND CROSS-EXAMINED ON 5/21/05, BUT THEY WERE NOT CALLED AND CROSS-EXAMINED ON THAT DATE TO TESTIFY ON

And Thus, CONFIRM The defense's Claim that he did Not Throw such Fecies "Intentionally" on the ALLEGED OFFICER (S) IN his INDICTMENT; FINALLY PROVIDE a Plausible VERSION OF Contractual TRANSACTION Between The CRIME and VICTIM and the AFTERMATH. COUNSEL Failed also To SUBPENA witness (III), Wesley GREENE SBI: 275884, and CROSS-EXAM him as well. Under the STRICKLAND-FRITZ test, defendant MUST prove the FOLLOWING two - Prongs:

FIRST, The defendant must show That COUNSEL PERFORMANCE was DEFICIENT. This REQUIRES showing That COUNSEL MADE ERRORS SO SERIOUS THAT COUNSEL WAS NOT FUNCTIONING as The "COUNSEL" GUARANTEED The defendant by The SIXTH AMENDMENT. second, The defendant must show That The DEFICIENT PERFORMANCE PRE-JUDGED The defense, This REQUIRES showing That COUNSEL'S ERRORS WERE SO SERIOUS AS TO DEPRIVE The defendant of a FAIR TRIAL, A TRIAL Whose RESULT IS RELIABLE (see STRICKLAND v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L.ed 674, 693 (1984); STATE v. FRITZ, 105 N.J. 42, 58, 519 A.2d 336 (1987)). IF COUNSEL Had SUBPENA and CROSS-EXAM ALL his WITNESSES, The TRIAL IN HIS CONVICTION MIGHT WOULD HAVE BEEN DIFFERENT BECAUSE OF STATE LACK OF EVIDENCE THAT WAS already INSUFFICIENT, To have Defendant witness CROSS-EXAM would have very much likely have affected the outcome of the case as it directly contradicts the victim's testimony, making Defendant Defense stronger simply because, "against" his WITNESSES

Could have provide The sworn testimony of what happen on the Nite officer shannon was assaulted By Fecies see (STATE v. PETROZELLI, 796 A.2d 927 May 14, 2002) where "Defendant was entitled to an evidentiary hearin on his claim of ineffective assistance of trial Counsel for Counsel Failure to call alleged exculpatory witnesses in trial in which defendant was charged with Theft by failure to make Required disposition of Property's witnesses, who were either friends, associates, or relatives of Defendant, Provided a plausible Version of Contractual Transaction Between defendant and Victim, and the aftermath". See (COMMONWEALTH v. STANLEY, 534 P.2d 297, 300, 632 A.2d 871, 872 (1993)).

even after Counsel for Defendant acted with pre-Judice, so grievous that Counsel performance fell below an objective standard of reasonableness; Counsel then took it upon her self to file Defendant Appeal on 8-25-2005 in then later sent him his appeal copy already filed on 9-23-2005 (see Exhib. B1). Thus even when defendant filed a motion for pro se Pursue to Rule 26(d)(iii) (see exhibit B-1) Defendant Counsel filed that Appeal to the Supreme Court one full month when she was suppose to advise the Client of these Rights before filing it without his notice (see exhibit B-1-2, of Supreme Court). also see Rule DE St S. Ct. R. 26^{*}A-B^{*}, 2007 That Clearly states:

(A) Copy to Client. "Supplied the Client with a copy of the motion and the brief (B) advise to the

Client, That the Client could state in a writing delivered to The attorney within 30 days, any point That The Client wanted the court to consider and That such a writing would be included in The Brief. Such statement by the Attorney shall state The date on which the Attorney delivered a copy of The motion and brief to the Client, and whether or not writing was Received in Response thereto. Nowhere in Defendant Criminal Court Docket it says: "She gave such statement," and it stated the date on which She Delivered a copy of the Brief to the Defendant and whether a copy/writing was Received in Response to see exhibit A-1-2, B-1-2. Defendant Counsel was ineffective and knew what She was Doing after the Defendant had Filed a Pro'se motion pursuant to DE St s. ct Rule (d)(ii) see (exhibit B-2), of the Reply Brief, and exhibit *B-#1. If Counsel would had Follow the Rule 26*(B), and Had notice client of what she was doing, there would have been any of the above Deficiencies, or Affirmed Appeal in Supreme Court, if she would had provided Client with a copy of the Brief Before Filing it, it would had impacted the outcome also on Defendant "agian" Appeal, Because if Client DID not Desire that ground she had placed down to argue, Client would of simply had a right to file pro'se! on 2/25/2010 defendant Appeal was affirmed in the Supreme Court, and his mandate returned with a Denied hearing on Bench see (B-1) and (B-3)

Petitioner demonstrate That Failure to Consider the claims will result in the fundamental Miscarriage of Justice simply Because:

The Sixth Amendment right to Counsel exists and is Needed, in order to protect the Fundamental right to a fair trial, and the Constitution guarantees a fair Trial Through the Due Process clauses, Thus the right to Counsel Plays a crucial role in the Adversarial System embodied in the Six Amendment, since access to counsels skill and knowledge is necessary to accord defendants the "ample opportunity to meet the Case of the Prosecution" to which they are entitled, Adams v. United States ex rel. MC. Cann, 317 U.S. 269, 275, 276, 63 S. Ct. 236, 240, 87 L.Ed. 268 (1942); See Powell v. Alabama, supra, 267 U.S. at 68-69, 53, S. Ct. 63-64

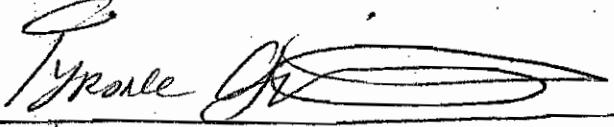
"IN all Criminal prosecutions, the accused Shall enjoy the Right to a Speedy and clistrict wherein the Crime Shall have been committed by Law, and to be informed of the Nature and cause of the accusation; to be confronted with the witnesses against him; to have Compulsory Process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense." USCA, const. Amend. 6; Petitioner also contends that the state courts should have excused his procedural default "in the interest of Justice" and

that their failure to do so constitutes a
"Substantial Miscarriage of Justice"

CONCLUSION

For the reasons and upon the authorities cited herein,
the undersigned respectfully submits that the Defendant's
convictions and sentence must be reversed.

Respectfully submitted,



TYRONE GUINN SEI:375731

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SUPERIOR COURT CRIMINAL DOCKET
(as of 09/22/2005)

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State of Delaware v. TYRONE L GUINN
 State's Atty: CARI A VAN DYKE , Esq.
 Defense Atty: NICOLE M WALKER , Esq.

DOB: 11/12/1984
 AKA: TYRONE H GUINN
 TYRONE H GUINN

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	0411013992	IN04111483	ASSLT DET FACIL	TG	05/20/2005
002	0411013992	IN04111484	ASSLT DET FACIL	TNG	05/20/2005
003	0411013992	IN04111485	ASSLT DET FACIL	TNG	05/20/2005

No.	Event	Date	Event	Judge
1	11/23/2004		CASE ACCEPTED IN SUPERIOR COURT. ARREST DATE: 11/17/2004 PRELIMINARY HEARING DATE: 112204 BAIL: SECURED BAIL-HELD NO CONDITION	6,000.00 100%
2	11/29/2004		INDICTMENT, TRUE BILL FILED.NO 117 SCHEDULED FOR CASE REVIEW AND ARRAIGNMENT 12/20/04 AT 9:00	
3	12/06/2004		SUMMONS MAILED.	
4	12/20/2004		NOTICE OF SERVICE - DISCOVERY RESPONSE.	
5	01/18/2005		ARRAIGNMENT CALENDAR - 10-C FILED_BY MCDONALD CASE REVIEW & ARRAIGNMENT CALENDAR: SET FOR FINAL CASE REVIEW. DATE: 1/18/05 @ 9	BABIARZ JOHN E. JR.
6	01/18/2005		FINAL CASE REVIEW: NO PLEA/SET FOR TRIAL 5/19/05 ORDER SCHEDULING TRIAL FILED. TRIAL DATE: 5/19/05 CASE CATEGORY: #2 ASSIGNED JUDGE (CATEGORY 1 CASES ONLY): UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY FOR TRIAL. ABSENT EXCEPTIONAL CIRCUMSTANCES, RESCHEDULING OR CONTINUANCE REQUESTS WILL BE DENIED.	ABLEMAN PEGGY L.
7	04/14/2005		DEFENDANT'S LETTER FILED.	ABLEMAN PEGGY L.

SUPERIOR COURT CRIMINAL DOCKET
(as of 09/22/2005)

Page 2

State of Delaware v. TYRONE L GUINN
 State's Atty: CARI A VAN DYKE , Esq.
 Defense Atty: NICOLE M WALKER , Esq.

DOB: 11/12/1984
 AKA: TYRONE H GUINN
 TYRONE H GUINN

	Event		
No.	Date	Event	Judge
		TO: LAWRENCE SULLIVAN DEFENDANT WANTS A NEW ATTORNEY ASSIGNED TO CASE.	
7	04/26/2005	SUBPOENA(S) MAILED.	
8	05/05/2005	STATE'S WITNESS SUBPOENA ISSUED.	
9	05/11/2005	TRANSCRIPT FILED. PRELIMINARY HEARING-NOVEMBER 22, 2004 BEFORE COMM. MARY MCDONOUGH	JOHNSTON MARY MILLER
10	05/19/2005	TRIAL CALENDAR- WENT TO TRIAL JURY	JOHNSTON MARY MILLER
11	05/20/2005	CHARGE TO THE JURY FILED.	JOHNSTON MARY MILLER
		JURY TRIAL HELD BEFORE JUDGE JOHNSTON 5/19-5/20/05. ON 5/20/05, THE DEFENSE MADE A MOTION FOR A JUDGEMENT OF ACQUITTAL ON ALL 3 COUNTS. THE MOTION WAS DENIED. THE JURY BEGAN DELIBERATIONS ON 5/20/05. THE JURY RETURNED ON 5/20/05 WITH VERDICTS OF: ASSAULT IN A DETENTION FACILITY (1483) GUILTY; ASSAULT IN A DETENTION FACILITY (1484) NOT GUILTY- JUDGE JOHNSTON DECLARED THIS CHARGE NOT GUILTY; THE JURY COULD NOT AGREE ON A VERDICT FOR CHARGE 1485; ACQUITTAL ON 1485. JUDGE JOHNSTON DECLARED A FULL PRE-SENTENCE INVESTIGATION IS ORDERED. SENTENCING WILL BE ON JULY 1, 2005 @ 9:30.	
		STATE'S ATTORNEY: CARI VAN DYKE DEFENSE ATTORNEY: NICOLE WALKER COURT REPORTER(S): PATRICIA GANCI/JEANNE CAHILL COURT CLERK(S): MARIE CARUSO/JENNIFER HOUSTON/ANGELA HAIRSTON/ ANTHONY IANNELLI EVIDENCE IS STORED IN THE VAULT	
12	07/01/2005	SENTENCING CALENDAR: DEFENDANT SENTENCED.	JOHNSTON MARY MILLER
13	07/01/2005	SENTENCE: ASOP ORDER SIGNED AND FILED 7/14/05	JOHNSTON MARY MILLER
	07/19/2005	LETTER FROM SUPREME COURT TO KATHLEEN FELDMAN, COURT REPORTER RE: A NOTICE OF APPEAL WAS FILED ON JULY 13, 2005. THE TRANSCRIPT IS DUE AUGUST 22, 2005. 313, 2005	
14	08/01/2005	LETTER FROM SUPREME COURT TO COUNSELOR NICOLE WALKER, ESQ.	

SUPERIOR COURT CRIMINAL DOCKET
(as of 09/22/2005)

Page 3

ate of Delaware v. TYRONE L GUINN
 State's Atty: CARI A VAN DYKE , Esq.
 Defense Atty: NICOLE M WALKER , Esq.

DOB: 11/12/1984
 AKA: TYRONE H GUINN
 TYRONE H GUINN

	Event	No. Date	Event	Judge

	RE: THE NOTICE OF APPEAL FILED ON JULY 13, 2005. DOES NOT COMPLY WITH SUPREME COURT RULE 7(C) (9). JUDGE JOHNSTON'S JULY 1ST SENTENCING ORDER MUST BE ATTACHED TO THE APPEAL.			
15	08/03/2005 TRANSCRIPT FILED. TRIAL-MAY 20, 2005 BEFORE JUDGE JOHNSTON AND JURY RPR-JEANNE CAHILL			
16	08/17/2005 TRANSCRIPT FILED. TRIAL-MAY 19, 2005 BEFORE JUDGE JOHNSTON AND JURY P.GANNI,RPR			
17	08/17/2005 TRANSCRIPT FILED. SENTENCING-JULY 1, 2005 BEFORE JUDGE JOHNSTON P.GANNI,RPR			
	08/23/2005 RECORDS SENT TO SUPREME COURT. 313, 2005			
18	08/29/2005 <i>Amended Criminal Docket - Sentencing Date Record</i> 313, 2005			

*** END OF DOCKET LISTING AS OF 09/22/2005 ***
 PRINTED BY: JDEFDAB

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 v.) I.D. No. 0411013992
)
 TYRONE GUINN)
)
 Defendant.)

The Grand Jury charges Tyrone Guinn with the following offenses:

COUNT I. A FELONY IN # 04-11-1483

ASSAULT IN A DETENTION FACILITY, in violation of Title 11, Section 1254 of the Delaware code of 1974, as amended.

TYRONE GUINN, on or about the 30th day of June, 2004, in the County of New Castle, State of Delaware, while being confined in a detention facility, did intentionally strike Officer Shannon with urine, feces, or other bodily fluid, a guard at the facility who was acting in the lawful performance of his duties.

COUNT II. A FELONY IN # 04-11-1484

ASSAULT IN A DETENTION FACILITY in violation of Title 11, Section 1254 of the Delaware Code of 1974, as amended.

TYRONE GUINN, on or about the 30th day of June, 2004, in the County of New Castle, State of Delaware, while being confined in a detention facility, did intentionally strike Officer Stevens with urine, feces, or other bodily fluid, a guard at the facility who was acting in the lawful performance of his duties.

COUNT III. A FELONY

IN 3 04-11-1485

ASSAULT IN A DETENTION FACILITY, in violation fo Title 11, Section 1254 of the Delaware Code of 1974, as amended.

TYRONE GUINN, on or about the 30th day of June, 2004, in the County of New Castle, State of Delaware, while being confined in a detention facility, did intentionally cause physical injury to Neil Stevens, a correctional officer acting in the lawful performance of his duties.

1 IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
 2 IN AND FOR NEW CASTLE COUNTY
 3
 4 STATE OF DELAWARE,
 5 Plaintiff,
 6 v. IN04111483
 7 TYRONE L. GUINN,
 8 Defendant.
 9
 10 BEFORE: HONORABLE MARY M. JOHNSTON, J.
 and jury
 11
 12 APPEARANCES:
 13 CARI VAN DYKE, ESQ.
 DEPARTMENT OF JUSTICE
 for the State
 14
 15 NICOLE M. WALKER, ESQ.
 OFFICE OF THE PUBLIC DEFENDER
 for the Defendant
 16
 17
 18 TRIAL TRANSCRIPT
 MAY 19, 2005
 19
 20
 21 PATRICIA L. GANCI, RPR, CRR
 22 SUPERIOR COURT OFFICIAL REPORTERS
 23 500 N. King Street, Suite 2609, 2nd Floor
 Wilmington, Delaware 19801-3725
 (302) 255-0653

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 12 - - -
 13 May 19, 2005
 Courtroom No. 8E
 14 11:45 a.m.
 15 PRESENT:
 16 As noted.
 17 - - -
 18 (Whereupon, jury enters the room at 1:51 p.m.)
 19 THE COURT: Good afternoon, ladies and
 gentlemen.
 20
 21 Ms. Van Dyke, are you ready to proceed?
 22 MS. VAN DYKE: Yes, Your Honor. May it please
 23 the Court.

RECEIVED AUG 18 2005

3

1 Good afternoon, ladies and gentlemen. My name
 2 is Cari Van Dyke. I'm a Deputy Attorney General. I
 3 represent the people of the State of Delaware. This is
 4 my time now to give you an opening statement, which is
 5 basically an introduction to the case, and I'd like to
 6 start by telling you that individuals who commit crimes
 7 and are later convicted of those crimes oftentimes go to
 8 prison. They go to prison because they have chosen to
 9 not abide by the law. Even when the individuals are
 10 incarcerated for those criminal offenses, they choose to
 11 still continue to not abide by the law. So, yes, when
 12 people are incarcerated, they do commit crimes in prison
 13 and the State prosecutes them just as if it had happened
 14 on the city streets.

15 The defendant in this case is Tyrone Guinn. He
 16 is sitting at the far table next to his attorney. On
 17 June 30th, 2004, Tyrone Guinn was a sentenced inmate at
 18 the Delaware Correctional Center in Smyrna, Delaware.
 19 He was -- as a sentenced inmate, he was secured in
 20 what's called, what we refer to as the SHU. It's the
 21 Secured Housing Unit. It's a super max detention
 22 facility.

23 While he's at this facility, there are

4

1 strict guidelines. As in any prison, there are strict
 2 rules that must be followed not only by the inmates, but
 3 by the correctional officers. And in this super maximum
 4 security prison, there are rules that inmates don't have
 5 contact with other inmates. They are housed
 6 individually. They eat in their cells. They shower
 7 individually. They go to the recreation yard
 8 individually, and they do not have contact with one
 9 another. At all times when they leave their cell or if
 10 they leave the recreation yard, they are escorted by two
 11 guards which are correctional officers.

12 On June 30th, 2004, Tyrone Guinn at some point
 13 was secured in what's called an interior recreation
 14 yard. It's not outside. It's inside the building, but
 15 it's a yard in which he can exercise, walk around. He's
 16 not cuffed. He uses that yard. And while he's secured
 17 in there alone, not with any inmates, Officer Shannon,
 18 Malcolm Shannon, and Officer Neil Stevens are escorting
 19 another inmate. They are escorting this inmate from his
 20 cell to the shower area. And it's two guards, and this
 21 inmate is also cuffed behind his back as he's walking.
 22 And as they're walking, they're walking down a
 23 very narrow hall, probably about six feet in width. And

<p style="text-align: right;">17</p> <p>1 A. As soon as I come in, first thing, probably be 2 briefed by the officers that were there previously, just 3 what went on during the course of the day, anything, you 4 know, just a heads-up for everything. Basically, after 5 that, get a count for all the inmates, make sure 6 everybody's there. From there we go onto feeding. That 7 takes about a half an hour out of our time, 45 minutes 8 out of the time. Then after that, that's when we start 9 recreation, and usually we do about six cells at a time. 10 And between that, that takes about an hour and 45 11 minutes, two hours to go ahead and do two tiers at the 12 same time. And we bring them in for showers, phone 13 calls, if there is something going on, and basically 14 after that, it's just keeping up on our area checks.</p> <p>15 Q. Okay. Thank you.</p> <p>16 How are the tiers laid out? You said you have 17 two tiers that you had to supervise on the 30th. Can 18 you explain, are those tiers one on the bottom level, 19 one on the top level?</p> <p>20 A. Yes. Well, each tier has two levels that has 21 12 cells on each level. And there's only one inmate to 22 each cell.</p> <p>23 Q. Okay. If you don't mind, to assist the jury,</p>	<p style="text-align: right;">19</p> <p>1 A. There's two.</p> <p>2 Q. Three on the outside?</p> <p>3 A. Right.</p> <p>4 Q. And then you have 12 inmate cells?</p> <p>5 A. Right, for the bottom level. There's 12 for 6 the top. It's the same format.</p> <p>7 Q. Okay. And what is the -- it says Yard 2 off to 8 the left. That is the second yard?</p> <p>9 A. Yeah, that's the second yard. That's how we 10 have to label it.</p> <p>11 Q. That's all right. No, you're doing very well.</p> <p>12 Where is Tyrone -- do you know Tyrone Gulnn?</p> <p>13 A. Yes.</p> <p>14 Q. Could you please tell the Court where his cell 15 is located?</p> <p>16 A. His cell at the time was located here, at Cell 17 9.</p> <p>18 Q. Cell 9. Okay. Why don't you go ahead back and 19 take a seat?</p> <p>20 Okay. Now, after you drew that diagram, could 21 you please tell the jury what procedures you must follow 22 at all times when moving inmates out of their cell?</p> <p>23 A. Removing a SHU inmate from the cell, it must be</p>
<p style="text-align: right;">18</p> <p>1 with permission of the Court, I'd like to have the 2 officer step down and possibly draw a sketch.</p> <p>3 MS. WALKER: No objection.</p> <p>4 THE COURT: All right.</p> <p>5 BY MS. VAN DYKE:</p> <p>6 Q. If you don't mind drawing a sketch of the tier 7 layout that you were in charge of on that night, on the 8 30th.</p> <p>9 A. This is just basically just a bottom level.</p> <p>10 There's another level that's just like this.</p> <p>11 Q. This would be the bottom level?</p> <p>12 A. This is the bottom level tier. When you come 13 in through the sliders, first thing is you have -- cells 14 1 through 10 and 11 to 12 are, like, facing towards the 15 security yard the inmates, they go and have their 16 recreation in. That's fenced in all around them.</p> <p>17 Q. How many of those are there?</p> <p>18 A. It's two yards on the inside.</p> <p>19 Q. Two yards?</p> <p>20 A. And it's three on the outside. But most time 21 they only use two on the outside, but for the inside 22 there's only two.</p>	<p style="text-align: right;">20</p> <p>1 two officers present and the inmate must be cuffed from 2 behind at all times. And when leaving the tier, they 3 must be shackled for rec purposes -- recreational 4 purposes. When they go to outside yards, whatever, 5 shackles aren't really needed. But usually it's just 6 being handcuffed from behind, and then you're allowed to 7 bring out just a laundry bag or just clothing for 8 whatever they want to put on when they come out the 9 shower. And that's all.</p> <p>10 Q. Okay. Now, is that procedure followed at all 11 times when they leave their cell?</p> <p>12 A. Yes.</p> <p>13 Q. And do you have -- what is a normal uniform for 14 you? Is that what you have on or a little different?</p> <p>15 A. No, we have kind of a little different uniform. 16 It's an old maximum uniform, but it becomes just another 17 substitute for this, you know, just for comfortability 18 reasons.</p> <p>19 Q. So you don't have all of the shield on?</p> <p>20 A. No, the shield is just a patch and it's 21 basically BTUs, like Army BTUs.</p> <p>22 Q. So it's more comfortable clothing for you?</p>

<p style="text-align: right;">25</p> <p>1 Q. What would Inmate Guinn be taking to the 2 recreation yard?</p> <p>3 A. Well, at the time I remember he just took the 4 usual: his boxers, shower shoes, his slippers, and he 5 already had his jumper and sweat suit on.</p> <p>6 Q. And he's cuffed at this point going to the 7 recreation yard?</p> <p>8 A. Yes.</p> <p>9 Q. And are you being assisted by anyone?</p> <p>10 A. Yes, Officer Stevens.</p> <p>11 Q. Okay. And how long do they normal stay in 12 recreation?</p> <p>13 A. 45 minutes to an hour.</p> <p>14 Q. Okay. And you know why you're here today, 15 right?</p> <p>16 A. Yes.</p> <p>17 Q. Could you please describe to the jury what you 18 were doing when that incident took place?</p> <p>19 A. Well, after I placed Mr. Guinn in the yard, I 20 proceeded to the next cell over to get the next inmate 21 out. And that was Inmate Ernest Hill.</p> <p>22 Q. Okay. Would that be cell No. 10?</p> <p>23 A. Cell No. 10.</p>	<p style="text-align: right;">27</p> <p>1 Q. Okay. Now, you said that Inmate Ernest Hill 2 wanted to get a shower?</p> <p>3 A. Yes.</p> <p>4 Q. And where was Tyrone Guinn at that time?</p> <p>5 A. He was in Yard 2.</p> <p>6 Q. Okay. Yard 2. And what did you do with Ernest 7 Hill?</p> <p>8 A. Well, after he was cuffed and he grabbed his 9 belongings, we go up and went ahead and we just walked 10 down to the showers. And I was walking next to him. 11 And he had exchanged some words with Inmate Guinn and, 12 you know, a typical, you know, just thought they were 13 having conversation or whatever. And as we were 14 walking, I just -- I turnt forward, and just that fast I 15 heard just like a splash and I was drenched. And I 16 looked around, and I was covered in feces.</p> <p>17 Q. Okay.</p> <p>18 A. And it smelled -- it smelt of urine, and it was 19 covered all over the side of my face and my hair and on 20 my clothes.</p> <p>21 Q. How certain were you that it was feces and 22 urine?</p> <p>23 A. I could tell by the smell and the color was</p>
<p style="text-align: right;">26</p> <p>1 Q. Okay. And what was your intention with Ernest 2 Hill?</p> <p>3 A. Well, he didn't want -- he didn't want to go 4 out for recreation. He wanted to take a shower. So I 5 was taking him to the showers.</p> <p>6 Q. And where are the showers located on that 7 diagram if you would just kind of describe?</p> <p>8 A. Right before cell 1.</p> <p>9 Q. So all the way down at the other end of the 10 hall?</p> <p>11 A. Yes.</p> <p>12 Q. And this hallway, could you describe the 13 approximate width of this hallway, what it's comprised 14 of?</p> <p>15 A. Well, the yard takes up most of the room. So 16 it's pretty -- it's not too narrow, but it's about -- 17 it's -- as far from the beginning of this building right 18 here to where the back row is, there's about that much 19 walking distance from it between.</p> <p>20 Q. Between the recreation yard and the cell?</p> <p>21 A. Yes.</p> <p>22 Q. That's how much space?</p> <p>23 A. Yeah, that's how much space it is.</p>	<p style="text-align: right;">28</p> <p>1 there, and it was just disgusting.</p> <p>2 Q. And where were you struck?</p> <p>3 A. Across the side of my face and my hair, my 4 back, all across the back of my shirt, my pants.</p> <p>5 Q. Okay. What side?</p> <p>6 A. All, it was across my whole right side.</p> <p>7 Q. Your whole right side?</p> <p>8 A. Yes.</p> <p>9 Q. And what was directly to your right side as 10 you're walking Ernest Hill out to the shower?</p> <p>11 A. Yard 2.</p> <p>12 Q. Yard 2. Okay. And was there anyone else in 13 Yard 2 other than Tyrone Guinn at that time?</p> <p>14 A. No, there was only one person allowed in the 15 yard.</p> <p>16 Q. Okay. Now, were the other inmates in the cells 17 along that corridor, that hallway?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Did anything strike you from the left 20 side?</p> <p>21 A. No.</p> <p>22 Q. Okay. And could you describe to the jury what 23 the yard is comprised of? Is it fenced? Is it --</p>

29 1 A. It's completely fenced, and towards the back of 2 the yard is a concrete wall with probably a little 3 window. And that's about it. Mostly it's just plain 4 fence. 5 Q. Okay. How about the cells directly across from 6 the yard, are all of the cells on that tier? 7 A. Yes. 8 Q. What are they made of and do you have any 9 openings? 10 A. No, there's no openings. Just still iron 11 doors, and there's probably like a little vent -- little 12 holes at the bottom. But, you know, nothing to reach 13 out or grab really like that. 14 Q. Okay. So when you open up a cell, that's 15 basically how you cuff an inmate. You have to actually 16 open up the door -- 17 A. No. Actually, it goes through the pod officer. 18 We have a pod, and it's operated by a panel that you 19 press buttons to open the doors. 20 Q. Okay. You mentioned a pod. Can you explain to 21 the jury what the pod is? 22 A. Well, that's the control center of the whole -- 23 the entire building. You know, every door is controlled	31 1 Q. And where did it come from? 2 A. It came from our right side. 3 Q. But where did it really come from? 4 A. It came from Yard 2. 5 Q. Okay. And did you actually physically see 6 Tyrone Guinn throw -- 7 A. No. 8 Q. -- the feces? 9 A. No, I didn't. 10 Q. What did you -- what was your first thought 11 when this happened to you? 12 A. I was -- I was stunned because I couldn't 13 believe it was actually human feces on my body. So I 14 really didn't know what was going on, but after I gained 15 some kind of sense, I knew I had to secure. The first 16 thing to do all the time is to secure. So the first 17 thing I did was to secure Ernest Hill in the shower 18 because that was the closest place to me. 19 Q. And did Officer Stevens help you do that? 20 A. Yes. 21 Q. Okay. And once you secured him in the shower 22 area, what do you do next? 23 A. After that, Officer Stevens went to go get
---	---

30 1 by an officer. You know, nothing can be -- it can be 2 opened with a key, but everything is done by a button, 3 by pushing a button. 4 Q. Okay. Now, when you were walking Ernest Hill 5 down to the shower, he was cuffed, correct? 6 A. Yes. 7 Q. And how about Tyrone Guinn? When he was in the 8 yard, was he cuffed? 9 A. No, they aren't in the yard cuffed. 10 Q. So his hands are free and he's free to move 11 about the yard? 12 A. Yes. 13 Q. What is the size of the yard, approximately, if 14 you know? If you don't know, I don't want you guessing. 15 A. I don't know. It's fairly large. 16 Q. Now, what would you say the approximate 17 distance -- you described this narrow hallway. I mean, 18 the yard is directly along that hallway? 19 A. Yes, it's right along. It's right there. You 20 can just easily walk to the fence. 21 Q. Now, you said the feces, do you know what 22 direction it came from? 23 A. Yes.	32 1 Inmate Guinn and I assisted him with that. And we -- he 2 cuffed up from there in the yard, and we brought him to 3 the cell. 4 Q. Okay. You cuffed Tyrone Guinn? 5 A. Yes. 6 Q. How were you able to accomplish that with him 7 in the yard? 8 A. Well, there's a little panel to drop down to 9 allow them to put their wrists through. It's a little 10 flap. 11 Q. And you were present when that happened? 12 A. Yes. 13 Q. And you still meanwhile have all of this 14 stuff -- 15 A. Yes. 16 Q. Feces running down your side? 17 A. Yes. 18 Q. Okay. Could you describe the hallway? Was it 19 covered in any way with the feces? 20 A. Yes, the floors were covered in feces. It was 21 very liquidy. The walls by probably around like cell 3 22 or 4, the walls were covered. Some cell doors were and 23 the fences.
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<p style="text-align: right;">37</p> <p>1 Q. As a part of the investigation that took place, 2 did you speak to Officer, or Investigator Drake about 3 that, what happened to you?</p> <p>4 A. Yes, I believe discussing matters and that was 5 about it. And, you know, he just helped me out with, 6 you know, just a whole understanding of things. That's 7 about it.</p> <p>8 Q. Okay.</p> <p>9 MS. VAN DYKE: May I have a moment, Your Honor?</p> <p>10 THE COURT: Yes.</p> <p>11 MS. VAN DYKE: Thank you.</p> <p>12 Nothing further of this witness, Your Honor.</p> <p>13 CROSS-EXAMINATION</p> <p>14 BY MS. WALKER:</p> <p>15 Q. Good afternoon, Officer.</p> <p>16 A. How are you doing?</p> <p>17 Q. So you work for the Department of Corrections, 18 right?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. And you have been there a year and five months?</p> <p>21 A. Yes.</p> <p>22 Q. Now, that would make it, if my math is correct, 23 was it June 30th when this incident allegedly occurred?</p>	<p style="text-align: right;">39</p> <p>1 Q. But you didn't get it in your mouth?</p> <p>2 A. Right.</p> <p>3 Q. You didn't get it in your eyes, and you were 4 facing forward, correct?</p> <p>5 A. Right.</p> <p>6 Q. Away from the feces?</p> <p>7 A. Right.</p> <p>8 Q. So more accurately, you got hit in the head?</p> <p>9 A. No, I was hit from across, from the direction I 10 was walking. I was walking as if my head was tilted 11 this way, and when it came across, it was in a motion 12 like this.</p> <p>13 Q. Okay. But you said you were looking forward is 14 what I thought you said earlier?</p> <p>15 A. Right, I was looking forward.</p> <p>16 Q. Now, you know, I know you said from the witness 17 stand and the jury box was how far the walk is. Is that 18 right?</p> <p>19 A. No, no, no. I meant as far as the width of 20 the -- the width of the walkway.</p> <p>21 Q. Okay.</p> <p>22 A. That's what I meant.</p> <p>23 Q. Okay. How far away were you from the fence of</p>
<p style="text-align: right;">38</p> <p>1 A. Yes.</p> <p>2 Q. You would have been there about six months?</p> <p>3 A. Right.</p> <p>4 Q. So you were relatively new to the job, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Still learning the ropes, what you're supposed 7 to do, all of that jazz?</p> <p>8 A. Somewhat.</p> <p>9 Q. Okay. And you were in a pretty -- a part of 10 the prison that has a lot of pretty tough guys, right?</p> <p>11 A. Right.</p> <p>12 Q. Okay. You indicated that you were escorting 13 Mr. Hill. Is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And you were on the outside of the fence of 16 Yard 2?</p> <p>17 A. Uh-hmm.</p> <p>18 Q. You didn't look over towards Yard 2, but 19 something splattered you on the back, right?</p> <p>20 A. Right.</p> <p>21 Q. Now, you indicated that you got the feces on 22 your face?</p> <p>23 A. Right.</p>	<p style="text-align: right;">40</p> <p>1 the yard? Do you know?</p> <p>2 A. About two feet.</p> <p>3 Q. Two feet. Okay. Do you know -- do you have 4 any idea where -- how Mr. Guinn had feces in the rec 5 yard?</p> <p>6 A. Well, after we had -- after I had placed 7 Mr. Hill inside the shower, I did see that there was a 8 cup laying on the floor.</p> <p>9 Q. Okay.</p> <p>10 A. And it's usually the cup that's given to them 11 some time around lunchtime. Sometimes they get peanut 12 butter, and there was a peanut butter cup that was 13 laying on the ground.</p> <p>14 Q. Now, these guys, like I said, you're in a tough 15 part of the prison. It's important, obviously, for you 16 to keep a close eye on all of these individuals for 17 contraband, right?</p> <p>18 A. Right.</p> <p>19 Q. A little earlier you testified that Mr. Guinn 20 went out into the yard with his clothes?</p> <p>21 A. Right.</p> <p>22 Q. You didn't say anything about a cup at that 23 time, did you?</p>

	41		43
1	A. Right.	1	MS. VAN DYKE: The State in this case was
2	Q. And I would assume you checked the yard to make	2	not -- obviously, the defendant was interviewed in this
3	sure before an inmate goes out there that there's no	3	case. The State did not intend on offering his
4	contraband lying around. Would that be correct?	4	statement. The incident report that Ms. Walker's
5	A. Yes.	5	referring to basically includes, you know, some
6	Q. And did you bring the cup with you today?	6	conclusions based on the defendant's statement because
7	A. No.	7	if -- the testimony Officer Shannon had said is that he
8	Q. It wasn't taken into evidence?	8	didn't see him throw it. How did he know it was in his
9	A. I'm not sure.	9	jumpsuit? The only reason we know that is because of
10	Q. You're not aware of that?	10	the defendant's statement. I'm concerned about hearsay
11	A. All I do is take him. I had nothing to do with	11	statements basically, essentially, in that report.
12	it.	12	MS. WALKER: First of all, Your Honor, looking
13	Q. Okay.	13	at the report, it does not say Mr. Guinn told me that he
14	Now, in your -- you recall making -- writing an	14	intended to hit somebody else. He wrote a report based
15	incident report?	15	on evidence that he had. It's a conclusion that he
16	A. Yes.	16	wrote. He made it. That's not hearsay at all. If it
17	Q. I think you referred to that. Do you have a	17	had said Guinn said such and such, he had drawn a
18	copy of that with you?	18	conclusion. We don't know how he had drawn the
19	A. Yes.	19	conclusion.
20	Q. You do?	20	THE COURT: Are you going to ask him how he
21	A. Yes.	21	drew his conclusion?
22	Q. Can you take that out and take a look at it for	22	MS. WALKER: No, she can do that -- it's a
23	me?	23	question of -- for the jury.
	42		44
1	A. Sure.	1	MS. VAN DYKE: Your Honor, it also calls for
2	Q. I'm going to give you a couple of seconds to	2	speculation, too, because how is he to know how the
3	just read it over to yourself and then ...	3	inmate --
4	Okay. If you look at the second sentence,	4	MS. WALKER: He put it in his report. That's
5	which says, I'll read it and you can tell me if it's	5	the basis of this investigation. I think that's a fair
6	accurate: While walking by Yard 2 with Inmate Hill,	6	question to ask him, what he put in his report. What he
7	it's blacked out on my copy, but is that correct?	7	based it on is what he based it on. That's a question
8	A. Okay. Yes.	8	to put in front of the jury. Additionally, even if
9	Q. Inmate Guinn took a container out of his jumper	9	she's complaining that it is hearsay, it's an exception
10	and threw liquid at Inmate Hill. Is that right?	10	to the hearsay rule under 803(3) because it goes to
11	A. Yes.	11	Mr. Guinn's state of mind as to intent and, therefore,
12	Q. Okay. So from that you had concluded that it	12	it's an exception.
13	was Inmate Hill that he was trying to hit. Is that	13	MS. VAN DYKE: It's an admission of the party
14	correct?	14	opponent that the defendant cannot use unless he takes
15	A. Yes.	15	the stand.
16	Q. Okay. He wasn't trying to hit you; it just	16	THE COURT: Well, just a moment. Let's go back
17	happened you were in the wrong place at the wrong time?	17	to the 803(3).
18	A. (Witness indicating.)	18	MS. WALKER: 3.
19	Q. Okay.	19	THE COURT: It is a conclusion as to his state
20	MS. VAN DYKE: Your Honor, may we approach?	20	of mind, but it's not a statement as to his state of
21	THE COURT: Yes.	21	mind.
22	(Whereupon, the following sidebar conference	22	MS. WALKER: Well, she can't have it both ways,

<p style="text-align: right;">45</p> <p>1 properly examine him on it because he put it in the 2 report. If she's saying, no, she can't question him on 3 the basis of the conclusion because it's hearsay, then 4 she can't have that either because of 803(3).</p> <p>5 THE COURT: Well, the conclusion that he's 6 reached I think is admissible.</p> <p>7 MS. WALKER: Okay.</p> <p>8 THE COURT: The question is --</p> <p>9 MS. WALKER: I'm not going to ask him if he 10 said anything.</p> <p>11 THE COURT: But what are you going to ask him 12 then with regard to the basis of his conclusion?</p> <p>13 MS. VAN DYKE: I don't think it developed 14 enough for me to at this point say what I would ask him. 15 My concern is that it's bringing in evidence that the 16 only way the witness knew it was because of defendant's 17 statement. And that's my concern.</p> <p>18 THE COURT: All right. Well, he hasn't 19 testified to that yet, and he has not yet indicated that 20 he's going to. If he does, we'll handle the hearsay issue at that point.</p> <p>22 MS. WALKER: Absolutely.</p> <p>23 THE COURT: But I don't think it's admissible</p>	<p style="text-align: right;">47</p> <p>1 THE COURT: Right. 2 MS. WALKER: Thanks. 3 (Sidebar conference was concluded.) 4 BY MS. WALKER: 5 Q. All right, Officer. The last thing you had 6 indicated was that you had put in your report that 7 Mr. Guinn took the container out of his jumper and threw 8 it at Inmate Hill and missed him and hit you. Is that 9 right?</p> <p>10 A. Right. 11 Q. Okay. And everything you would put in your 12 report would be accurate and truthful. Is that correct? 13 A. Yes. 14 Q. And you wouldn't mislead anybody with the 15 incident report, would you? 16 A. No. 17 Q. Okay. Additionally, when you were talking -- 18 when you go onto explain the situation when they were 19 cuffing him, you indicate that there was a tussle. Is 20 that right? 21 A. Yes. 22 Q. And, now, Officer Stevens received a cut to his 23 ring finger and pointer finger?</p>
<p style="text-align: right;">46</p> <p>1 as to defendant's state of mind unless it is... 2 MS. WALKER: The point I'm trying to get is his 3 intent, what was his intent. 4 MS. VAN DYKE: The defendant has -- 5 MS. WALKER: And 803(3) is immaterial whether 6 the witness is available. It goes to state of mind. 7 THE COURT: Just a moment. 8 Well, it depends on when the statement was 9 made. I mean, if he made the statement too far after 10 the fact -- 11 MS. WALKER: He made it that day when he was 12 interviewed. 13 THE COURT: Well, that may not be close enough 14 in time to get to the 803(3). Just because it goes to 15 intent doesn't make it automatically admissible under 16 803(3). So if you're even thinking about that, we have 17 to go outside the presence of jury and talk about that. 18 MS. VAN DYKE: I'm sorry, I guess this a 19 premature objection. 20 THE COURT: That's all right. 21 MS. WALKER: I just want to make sure I can ask</p>	<p style="text-align: right;">48</p> <p>1 A. Right. 2 Q. Now, I believe your testimony was that that was 3 a result of the handcuffs. Is that right? 4 A. Yes. 5 Q. And it was a result of trying to put the 6 handcuffs back on Mr. Guinn? 7 A. Right. 8 Q. And the reason that there was this tussle that 9 ensued was that Mr. Guinn was pulling away? 10 A. Right. 11 Q. So Mr. Guinn didn't -- wasn't attacking the 12 officer. Is that right? 13 A. No, he wasn't attacking. 14 Q. He was trying to pull away from what -- your 15 best -- your perception of the situation was that 16 Mr. Guinn was trying to get away and that's why he had 17 to be subdued? 18 A. Right. 19 Q. Were the clothes packaged and put into evidence 20 at all? Do you know? 21 A. Yes, ma'am.</p>

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1	Q. You do not. Do you know whether this, I guess,	1	each other or were you touching each other?
2	concoction or the fluid, the feces, that's being	2	A. No, we weren't touching each other. There was
3	purported by the prosecutor, was that ever tested? Do	3	the proper space between us.
4	you know?	4	Q. Okay. How much space?
5	A. No. Well, I'm not sure, so...	5	A. He was probably about right here.
6	Q. So you don't know?	6	Q. And you said he, to your knowledge, did not
7	A. I don't know.	7	have any feces on him?
8	Q. Okay. And you didn't have to see a nurse or	8	A. No.
9	anybody with respect to --	9	Q. Anything on him. Okay.
10	A. I did see a nurse at the time, but she says as	10	Now, this container that we assume was the
11	long as it didn't get into like my eyes, my ears, or my	11	container that collected the feces by Mr. Guinn, Tyrone
12	mouth, she said then everything should be fine.	12	Guinn, is that considered contraband?
13	Q. You were okay?	13	A. Well, if it's kept in the room, yes, it is
14	A. Yes.	14	considered contraband. It is not used for its purpose
15	Q. Okay.	15	and then thrown away, it's contraband.
16	MS. WALKER: I have nothing further, Your	16	Q. Now, is this a large cup? Small cup? Can you
17	Honor.	17	describe?
18	REDIRECT EXAMINATION	18	A. The cup is about, probably about this size
19	BY MS. VAN DYKE:	19	right here.
20	Q. Physically, you're okay, but how did you feel	20	Q. Okay. And you said he took a number of boxer
21	when that happened to you?	21	shorts, articles of clothing?
22	A. Humiliated, and it just -- it felt unhuman.	22	A. Yes.
23	Q. Humiliated and unhuman?	23	Q. And he also had a jumpsuit on?
	50		52
1	A. Yes.	1	A. Yes, he had a jumpsuit and sweatshirt on.
2	Q. Now, Ms. Walker referred to your incident	2	Q. And your assumption was that he concealed that?
3	report that you wrote up after the incident took place,	3	A. Yes.
4	and you said that the -- in your report you referred to	4	Q. In the uniform?
5	the container was taken -- Guinn took the container out	5	A. Yes.
6	of his jumper and threw the liquid, basically?	6	MS. VAN DYKE: Thank you.
7	A. Right.	7	MS. WALKER: Just a couple on re-cross, Your
8	Q. At Inmate Hill?	8	Honor.
9	A. Yes.	9	CROSS-EXAMINATION
10	Q. Okay. Was that an assumption that you made at	10	BY MS. WALKER:
11	that time?	11	Q. I think you testified earlier that the -- that
12	A. Yes, at the time it is -- it was an assumption	12	Yard 2 was on your right-hand side, correct?
13	because we keep the bags, their clothes, and everything.	13	A. Yes.
14	We keep all of the articles outside of the yard. So it	14	Q. And I guess Mr. Hill then was on your left-hand
15	is evident he didn't have anything in his hand when he	15	side?
16	came out. So it had to come from in the jumper.	16	A. Yes.
17	Q. Okay. Was Ernest Hill struck?	17	Q. And you got struck on your right-hand side?
18	A. No.	18	A. Yes.
19	Q. Okay. How close were you to Ernest Hill?	19	Q. Okay. And Officer Stevens was behind you?
20	A. He was right beside me.	20	A. Yes.
21	Q. Okay. Directly beside you?	21	Q. So his right-hand side was also facing the
22	A. Yes.	22	yard?
23	Q. Would you say that you were almost touching	23	A. Yes.

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1 is drafted.	1 THE COURT: Perhaps, we should take a
2 MS. VAN DYKE: In some way it's work product	2 five-minute recess before we put Officer Stevens on the
3 because they follow their own administrative charges,	3 stand.
4 and I'm not comfortable with it being in front of a	4 (Whereupon, jury leaves the room at 2:49 p.m.)
5 jury.	5 THE COURT: We'll reconvene in five minutes.
6 THE COURT: I'm going to retain this and hold	6 (Recess taken.)
7 my ruling until I've had a chance to look at this.	7 THE COURT: Please bring in the jury.
8 MS. VAN DYKE: Thank you, Your Honor.	8 (Whereupon, jury enters the room at 3:03 p.m.)
9 (Sidebar conference was concluded.)	9 THE COURT: You may call your next witness.
10 BY MS. WALKER:	10 MS. VAN DYKE: Officer Neil Stevens, Your
11 Q. You indicated that you had had a previous	11 Honor.
12 contact with Mr. Guinn?	12 THE COURT: Do we need the diagram?
13 A. Yes.	13 MS. VAN DYKE: No, we do not.
14 Q. And there was no problems between the two of	14 THE COURT: All right. We can move that then.
15 you?	15 NEIL STEVENS, having duly been sworn, was
16 A. No.	16 examined and testified as follows:
17 Q. Okay. So when you drew the conclusion that you	17 DIRECT EXAMINATION
18 drew, it was based on what you knew about the two	18 BY MS. VAN DYKE:
19 inmates and yourself and your relationships, correct?	19 Q. Good afternoon, Officer Stevens.
20 A. I said as far as what?	20 A. Hello.
21 Q. Well, he didn't have any problems with you that	21 Q. With whom are you employed?
22 you know of, correct?	22 A. Delaware Correctional Center.
23 A. Right.	23 Q. And how long have you been an employee at

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1 Q. And you drew the conclusion he was throwing it	1 Delaware Correctional Center?
2 at the other inmate because why?	2 A. Five years.
3 MS. VAN DYKE: Object, Your Honor.	3 Q. Do you mind me asking how old you are?
4 MS. WALKER: Actually, I'll withdraw the	4 A. 26.
5 question.	5 Q. In what capacity do you work with the Delaware
6 BY MS. WALKER:	6 Correctional Center?
7 Q. You drew that conclusion. Is that correct?	7 A. What -- I don't understand. Capacity?
8 A. I mean, I have no previous history of, you	8 Q. What is your position with --
9 know, if they did have any problems.	9 A. I'm a correctional officer.
10 Q. Okay.	10 Q. Have you always maintained that position?
11 MS. WALKER: Thank you. Nothing further.	11 A. Yes, ma'am.
12 MS. VAN DYKE: Just prompted a question.	12 Q. Since your employment began?
13 REDIRECT EXAMINATION	13 A. Yes, ma'am.
14 BY MS. VAN DYKE:	14 Q. And what are your current duties and
15 Q. Were you aware of whether or not the defendant	15 responsibilities, if you can describe it briefly for the
16 and Ernest Hill had any problems?	16 jury?
17 A. No.	17 A. Just do routine checks, make sure inmates
18 MS. VAN DYKE: Okay. Thank you. Nothing	18 aren't getting out of line, recreation, feeding of
19 further of this witness, Your Honor.	19 inmates.
20 THE COURT: You may step down.	20 Q. Okay. And have you received any specialized
21 You may call your next witness.	21 training in that area to do your job, to perform your
22 MS. VAN DYKE: Thank you. The State would call	22 job?

<p style="text-align: right;">65</p> <p>1 A. At that moment, yes, ma'am.</p> <p>2 Q. Okay. Are inmates permitted to carry personal</p> <p>3 items into the yard?</p> <p>4 A. No, ma'am.</p> <p>5 Q. Okay. How about like their boxers, shoes,</p> <p>6 shower shoes?</p> <p>7 A. Shower stuff, they normally put that on the</p> <p>8 outside of the yard. They leave it on the outside of</p> <p>9 the yard or they place it on the shower that they're</p> <p>10 going to receive the shower at.</p> <p>11 Q. Okay. So they're not permitted to have</p> <p>12 anything inside the yard?</p> <p>13 A. No, ma'am.</p> <p>14 Q. Okay. So you don't recall seeing Inmate Guinn</p> <p>15 carrying anything?</p> <p>16 MS. WALKER: Objection, Your Honor. Asked and</p> <p>17 answered.</p> <p>18 THE COURT: I'll allow one more question. Go</p> <p>19 ahead.</p> <p>20 MS. VAN DYKE: I'm sorry, Your Honor?</p> <p>21 THE COURT: Go ahead. You may ask that</p> <p>22 question.</p> <p>23 BY MS. VAN DYKE:</p>	<p style="text-align: right;">67</p> <p>1 Q. Okay. And where were you taking that inmate?</p> <p>2 A. To the shower.</p> <p>3 Q. Okay. And in the process of taking him to the</p> <p>4 shower, where is Tyrone Guinn at this time?</p> <p>5 A. In Yard 2.</p> <p>6 Q. Okay. And why don't you lead the jury through</p> <p>7 your -- what happened, the process?</p> <p>8 A. Well, Mr. Hill was removed from lower 10. I</p> <p>9 was behind Officer Shannon and Inmate Hill. Then I</p> <p>10 heard something, looked up, and Officer Shannon had</p> <p>11 feces and urine just running all down his face, all over</p> <p>12 his face, the back of his head, all over the right side</p> <p>13 of his body.</p> <p>14 Q. Okay. How did you know it was feces and urine?</p> <p>15 A. You could smell it.</p> <p>16 Q. Could you -- you could also see it, right?</p> <p>17 A. Yeah, I could see it.</p> <p>18 Q. Okay. Did it go anywhere else?</p> <p>19 A. I had a little bit on my right pant.</p> <p>20 Q. What do you mean by "a little bit"?</p> <p>21 A. A splatter.</p> <p>22 Q. Okay. And where on your pant leg was it?</p> <p>23 A. About the knee level on the right-hand side.</p>
<p style="text-align: right;">66</p> <p>1 Q. Do you recall him carrying anything, container,</p> <p>2 anything?</p> <p>3 A. At any point?</p> <p>4 Q. Uh-hmm.</p> <p>5 A. Yes, there was a container, almost looked like</p> <p>6 a peanut butter jug or something in that manner.</p> <p>7 Q. Why do you refer to it as a peanut butter jug?</p> <p>8 A. Because that's what it looked like. It looked</p> <p>9 like a peanut butter container or maybe a juice</p> <p>10 container.</p> <p>11 Q. What was the size? You did that, so...</p> <p>12 A. Just probably about maybe this tall, that</p> <p>13 round.</p> <p>14 Q. When did you observe that container?</p> <p>15 A. After he -- after Officer Shannon got hit by</p> <p>16 the feces and urine.</p> <p>17 Q. Okay. All right. We're going to get to that</p> <p>18 right now. At what point -- what were you doing prior</p> <p>19 to that incident occurring? What were you and Officer</p> <p>20 Shannon doing?</p> <p>21 A. Removing another inmate from his cell.</p> <p>22 Q. And who was that inmate?</p>	<p style="text-align: right;">68</p> <p>1 Q. Okay. Was it on the back? The side?</p> <p>2 A. It was on the side.</p> <p>3 Q. Okay. And predominantly where would you say</p> <p>4 Malcolm Shannon, Officer Shannon, was hit on the --</p> <p>5 A. All on his right-hand side and on the backside</p> <p>6 of his right-hand side.</p> <p>7 Q. Okay. And what direction?</p> <p>8 A. It came from our right.</p> <p>9 Q. Okay. And what is -- what is the only --</p> <p>10 A. Yard 2.</p> <p>11 Q. Is that the only thing to your right?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. And who was in Yard 2?</p> <p>14 A. Inmate Guinn.</p> <p>15 Q. Was anyone else in that yard?</p> <p>16 A. No, ma'am. He was the only person out besides</p> <p>17 Mr. Hill, and he was handcuffed behind his back.</p> <p>18 Q. Okay. Was Tyrone Guinn, was he cuffed at any</p> <p>19 point when he was in the yard?</p> <p>20 A. In the yard until we take him off at the flap.</p> <p>21 That's maybe a period of five seconds.</p> <p>22 Q. Okay. So when he's in the yard, he's uncuffed?</p>

1 Q. Did you actually see Tyrone Guinn throw 2 anything? 3 A. No, ma'am. 4 Q. Okay. Do you recall whether or not Ernest 5 Hill, the other inmate that you were escorting, whether 6 or not he had any feces/urine on him? 7 A. I do not recall. I don't believe so. 8 Q. How far away would you say Officer Shannon was 9 from the recreation yard? 10 A. Well, on the walkway, I mean, there's only 11 maybe a space of four-feet wide to walk in between the 12 wall and the yard fence. So not far. 13 Q. Okay. Do you recall seeing Inmate Guinn in the 14 yard? 15 A. Yes, ma'am. 16 Q. Okay. Do you remember seeing him at any 17 particular location at any time in the yard? 18 A. All over it pretty much. 19 Q. How about when you were escorting Ernest Hill, 20 did you take any particular -- pay any particular 21 attention to Tyrone Guinn at that point? 22 A. Not until after the incident. I looked up, and 23 he was maybe three or four feet back from the fence.	69 1 take him out of the yard. 2 Q. Okay. And he was compliant in doing that? 3 A. Yes, he was compliant. 4 Q. And meanwhile, where is Officer Shannon? 5 A. Shannon, Officer Shannon, had come back to me. 6 Q. Okay. So he had to actually go on his own with 7 Inmate Hill? 8 A. It was only a couple more steps from where they 9 were at. 10 Q. Okay. And was there any necessity as to why 11 you needed to cuff Tyrone Guinn at that time? 12 A. It's just better to take care of a situation 13 right away if you can. 14 Q. Why is that? 15 A. This way he doesn't have time to do something 16 else. 17 Q. You said that he was compliant in cuffing him. 18 What was your next step at that point? 19 A. To take him out of the yard and place him back 20 in his cell. 21 Q. And where is his cell in relation to the yard? 22 A. Straight across, pretty much. 23 Q. And was Officer Shannon back with you?
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70 1 Q. Okay. Three or four feet back from the fence? 2 A. Yes, ma'am. 3 Q. Did he have anything in his hand? 4 A. The container. 5 Q. Could you tell the jury what your observations 6 were of Officer Shannon, like the way he responded to 7 what happened? 8 A. Mr. Shannon was -- he was in complete shock. I 9 mean, he was just in complete shock, probably denial 10 that he had feces and urine on his face and running -- 11 dripping down his ears and hair. 12 Q. And what about you, what were you thinking at 13 that time? 14 A. I felt bad for him. 15 Q. What was the thought that you had at that point 16 once you realized the incident occurred? What did you 17 do next? 18 A. I told Mr. Shannon to take Mr. Hill to the 19 shower, secured him in there, and then I told Mr. Guinn 20 to cuff up. And he did. 21 Q. What does "cuff up" mean? 22 A. Back up to the flap on the yard, place his	72 1 A. Yes, ma'am. 2 Q. Okay. And how -- could you explain to the jury 3 the process that you went through to get Tyrone Guinn 4 back into his cell? 5 A. I cuffed him at the flap in the yard. Removed 6 him from the yard. Brought him back to his cell. When 7 we bring him back to his cell, went to take one cuff 8 off, and he pulled away. As soon as he pulled away, 9 just restrained him. Took him down. Put the cuff back 10 on his right wrist, and then removed him from the cell, 11 and brought him out to the interview room. 12 Q. You said "he." When you started to take the 13 cuff off of his one hand, is this occurring while he's 14 inside his cell? 15 A. Yes, ma'am. He's at the cell, and the door's 16 maybe open this much. 17 Q. Okay. You're able to get in through that door? 18 A. I am? Yes, ma'am. 19 Q. With Tyrone Guinn? 20 A. Yes, ma'am. 21 Q. Okay. And you say he pulls away. Well, if 22 you're undoing the cuff, could you describe how he
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<p style="text-align: center;">77</p> <p>1 A. It was -- there was a good chunk of skin ripped 2 out and it was hanging off a little bit.</p> <p>3 Q. Okay. Once this incident happened, did you 4 stay on shift or did you go somewhere else?</p> <p>5 A. Captain McCraner actually sent myself and 6 Officer Shannon home to get showers and get changed.</p> <p>7 Q. And did you return for your shift?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And you worked till?</p> <p>10 A. 8 a.m. the next morning.</p> <p>11 Q. You compiled an incident report in regards to 12 this case, correct?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. Okay. Did you -- I believe you already stated 15 you did not see Tyrone Guinn throw the container of 16 feces?</p> <p>17 A. Excuse me?</p> <p>18 Q. You did not see Tyrone Guinn throw the 19 container of feces?</p> <p>20 A. At Officer Shannon? No, ma'am.</p> <p>21 Q. Okay. Did he throw it at Officer Shannon, did 22 he throw it at Inmate Hill, or was he throwing it at 23 you? Do you know? I don't want you to assume, but do</p>	<p style="text-align: center;">79</p> <p>1 Q. Okay. As you work on a tier, are you familiar 2 with who generally has a problem with who as far as 3 inmates?</p> <p>4 A. If you work the tier long enough, yes, ma'am, 5 you do learn, but I never worked that building pretty 6 much, so...</p> <p>7 Q. You never worked that building?</p> <p>8 A. I had, but that's not my area. That's not the 9 designated area for me to work every day. I was just 10 there on overtime that day.</p> <p>11 Q. Okay. But there was nothing that led you to 12 believe --</p> <p>13 A. No, ma'am.</p> <p>14 Q. -- as far as that there was bad blood between 15 Inmate Guinn and Ernest Hill?</p> <p>16 A. No, ma'am.</p> <p>17 MS. VAN DYKE: Thank you. Nothing further.</p>
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<p style="text-align: center;">78</p> <p>1 you --</p> <p>2 A. No, I don't know.</p> <p>3 Q. There's a reference in your report that he 4 threw the container or the feces at Inmate Hill. Is 5 there -- is that an assumption on your part?</p> <p>6 A. No, it said towards.</p> <p>7 Q. I'm sorry?</p> <p>8 A. It said towards Inmate Hill. It did not say at 9 him. It said towards him.</p> <p>10 Q. Towards him?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. So that would also refer to towards you and 13 Officer Shannon?</p> <p>14 A. Yes, ma'am. In the direction of.</p> <p>15 Q. Are you aware of any -- is there any bad blood 16 between you and Inmate Guinn?</p> <p>17 A. Never, no.</p> <p>18 Q. Are you aware of any bad blood between Officer 19 Shannon and Inmate Guinn?</p> <p>20 A. No, ma'am.</p> <p>21 Q. How about any -- are you familiar with any bad 22 blood between Inmate Ernest Hill and Tyrone Guinn?</p>	<p style="text-align: center;">80</p> <p>1 Q. All right. I just want to go over again how 2 you guys were lined up. My understanding, and let me 3 know if I'm wrong, is you were walking past Yard 2, 4 correct?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. You, Officer Shannon, and Mr. Hill. Is that 7 correct?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And Officer Shannon was to the right of 10 Mr. Hill?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. And you were behind Officer Shannon?</p> <p>13 A. I was. Yes, ma'am.</p> <p>14 Q. And on the right-hand side would be Yard 2 15 where Mr. Guinn was?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. Okay. Now, you indicated that you weren't 18 aware of any bad blood between Mr. Guinn and Mr. Hill, 19 right?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. And as the prosecutor indicated, you filed an 22 incident report in this case, correct?</p>
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	81		83
1	Q. Do you have a copy of that?	1	A. Yes, ma'am.
2	A. In my back pocket.	2	Q. Okay. Now, I suppose, as you indicated,
3	Q. Can you pull it out? Just take a look at it	3	Officer Shannon, he was shocked, correct?
4	for me and refresh your recollection, and I'll ask you a	4	A. Yes, ma'am.
5	couple of questions.	5	Q. And are you aware that he was only on the job
6	A. Okay.	6	six months at that time?
7	Q. Okay. You indicated, as she asked you, whether	7	A. I knew he was fairly new. Yes, ma'am.
8	or not, and I think you corrected her properly, that you	8	Q. Fairly new. And were you kind of like his big
9	threw -- excuse me -- that Mr. Guinn threw the fluid	9	buddy or more experienced person to be with him? Is
10	towards Inmate Hill. Is that correct?	10	that the way it works there?
11	A. Yes, ma'am.	11	A. Sometimes, yes.
12	Q. And everything in this report is truthful and	12	Q. Okay. Now, were you upset that feces landed on
13	accurate, correct?	13	you?
14	A. Yes, ma'am.	14	A. Not at the time because I had no idea it was on
15	Q. You wouldn't lie?	15	me until I looked afterwards.
16	A. No, ma'am.	16	Q. And when was that that you ascertained that?
17	Q. In an indent report?	17	A. After we had placed Inmate Guinn in the
18	A. No, ma'am.	18	interview room.
19	Q. Okay. Now -- but you testified earlier that	19	Q. Okay. But you knew right away that Shannon had
20	you had received -- had gotten feces on yourself,	20	it on him, obviously?
21	correct?	21	A. Yes, ma'am. Yes, ma'am.
22	A. Yes, ma'am.	22	Q. Okay. Now, you indicated that you then went --
23	Q. And Officer Shannon did as well?	23	at some point after Mr. Hill was placed in the shower

	82		84 **
1	A. Yes, ma'am.	1	that you went to the yard and cuffed Mr. Guinn. Is that
2	Q. So -- but you didn't choose to write that he	2	correct?
3	threw the fluid towards you and Officer Shannon?	3	A. Yes, ma'am.
4	A. No, ma'am.	4	Q. And you did that by having him place his hands
5	Q. Okay. And you say that the feces and urine did	5	through the flap?
6	not hit Inmate Guinn. Is that a typo? Should that read	6	A. Yes, ma'am.
7	Hill?	7	Q. And then you brought him out?
8	A. Yes, that was a typo. That should be Ernest	8	A. Yes, ma'am.
9	Hill.	9	Q. Okay. And then you took him to his cell?
10	Q. So the urine and feces did not hit Inmate Hill,	10	A. Yes, ma'am.
11	but did hit Shannon in his head, face, shirt, and pants	11	Q. Now, is there a flap on the cell door?
12	and that you received a splash of feces?	12	A. Not on the door. No, ma'am.
13	A. Yes, ma'am.	13	Q. Where is the --
14	Q. So you premised that particular sentence about	14	A. The flap is -- if this is face level at the
15	you and Officer Shannon receiving feces by the fact that	15	door, the flap is on the wall over here. That's to
16	Hill didn't get hit?	16	place -- primarily to place laundry and the food trays
17	A. Excuse me?	17	in the cell.
18	Q. The beginning of that sentence before you --	18	Q. Do you use it to cuff people up?
19	A. Started off with Inmate Hill?	19	A. No, ma'am. Never.
20	Q. Right.	20	Q. You actually cuff people -- excuse me. When
21	A. Yes, ma'am.	21	you take people to the yard?
22	Q. You talk about him first before you get to you	22	A. Yes, ma'am.

1 A. Yes, ma'am. 2 Q. And then you uncuff them through the flap? 3 A. In the yard. Yes, ma'am. 4 Q. So any time that you're dealing with an 5 individual in their cell, you'll go in there and they're 6 not cuffed? 7 A. No, there's actually a system where the door's 8 opened. The door slides. It can slide all the way 9 open. And then if you place -- there's a bar that 10 places on the food flap. 11 Q. Okay. 12 A. And I wouldn't say it locks in there, but 13 there's a slit for it to sit on. Therefore, the door 14 can only open up so much. 15 Q. Okay. 16 A. Then that's maybe about this much. 17 Q. And that's how you get them in and out and then 18 you uncuff them? 19 A. Yes, ma'am. Most of the time. Yes, ma'am. 20 Q. And Mr. Guinn did not give you any problem at 21 all when you cuffed him, correct? 22 A. Not at the yard. No, ma'am. 23 Q. But he gave you a hard time when you uncuffed	85 1 that found in the yard? 2 A. I had seen the container. I don't know... 3 Q. You don't remember where? 4 A. I seen the container in his hand. 5 Q. In his hand? 6 A. Before he came to cuff -- for him to handcuff 7 him in the yard. He had thrown it down on the yard 8 ground. 9 Q. So it was on the ground? 10 A. In the yard. Yes, ma'am. 11 Q. And you saw it down on the ground in the yard? 12 A. Yes, ma'am. 13 Q. Did you recover that item? 14 A. I did not. No, ma'am. 15 Q. Isn't it true that when inmates go into the 16 yard that it's important that there not be any 17 contraband in the area? 18 A. Yes, ma'am. 19 Q. Okay. So someone would have had to collect 20 that item at some point, correct? 21 A. In the yard? 22 Q. Yes. 23 A. Yes, ma'am.
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86 1 him? 2 A. Yes, ma'am. 3 Q. When he was in his cell? 4 A. Yes, ma'am. 5 Q. His habitat, correct? 6 A. Yes, ma'am. 7 Q. Okay. And you testified that he was pulling 8 away from you and that's what caused the problem here, 9 correct? 10 A. Yes, ma'am. 11 Q. And he was trying to get away from you? 12 A. He was turning around, pulling away. Yes, 13 ma'am. 14 Q. He didn't try to hit you? 15 A. No, ma'am. 16 Q. He wasn't trying to put you -- throw you to the 17 ground or anything? 18 A. No, ma'am. 19 Q. In fact, you did that to him to restrain him, 20 correct? 21 A. Yes, ma'am. 22 Q. You then indicated also that Mr. -- excuse 23 me -- that you had found some type of container. Was	88 1 Q. But you don't know who that was? 2 A. I have no idea. 3 Q. And you don't know whether that was done? 4 A. If it was collected? 5 Q. Right. 6 A. I can't say I do, no. 7 Q. Okay. Were your clothes collected? 8 A. Yes, ma'am. 9 Q. And are they here today? 10 A. I don't see them here. 11 Q. That you're aware of? 12 A. Not that I'm aware of. No, ma'am. 13 Q. Do you know whether the substance was ever 14 tested, to your knowledge, the items -- 15 A. I can't say I do. No, ma'am. 16 Q. Okay. And you indicated earlier that you never 17 had a problem with Mr. Guinn before that? 18 A. No, never. 19 Q. Okay. And you weren't on the tier long enough 20 to know the ins and outs of all of the relationships 21 between the prisoners? 22 A. Not on that tier. No, ma'am.
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<p style="text-align: right;">101</p> <p>1 this. It's unduly prejudicial. The fact that she's 2 already called a couple of officers to testify to the 3 nature of the confinement of that area, it's becoming 4 prejudicial. To now come in with death row inmates and 5 other maximum security inmates, that's not even relevant 6 to the point of what's going on here.</p> <p>7 THE COURT: Where are you going with this?</p> <p>8 MS. VAN DYKE: I'm moving onto Building 19, 9 which is where the defendant was.</p> <p>10 THE COURT: All right. I think for the 11 purposes of these proceedings it's not necessary to 12 describe by category the level of security this 13 defendant was under because that could possibly be 14 unduly prejudicial with regard to what he was convicted 15 of. Of course, if he takes the stand, that point 16 becomes moot.</p> <p>17 MS. WALKER: Right.</p> <p>18 THE COURT: But you certainly can explore the 19 nature of the security in that building, but not by type 20 or category.</p> <p>21 MS. VAN DYKE: I wasn't really sure I was going 22 in that area, but I will move on.</p> <p>23 THE COURT: All right.</p>	<p>1 they don't come out of their cells unless they have a 2 visit, court, or some kind of administrative function 3 they have to do in Building 20. The officers in the 4 building feed them through a food flap. When the 5 inmates are transported, they're transported by 6 handcuffs. If they're staying on the tier and if 7 they're going off of the tier, out of the building, 8 they're shackled and handcuffed.</p> <p>9 Q. Okay. And you said you do know Tyrone Guinn as 10 an inmate. Do you see him in the courtroom today?</p> <p>11 A. Yes, that's correct. He's seated in the 12 greenish-colored shirt to my right.</p> <p>13 Q. Thank you.</p> <p>14 Do you recall the incident involving Tyrone 15 Guinn, Officer Shannon, and Officer Stevens?</p> <p>16 A. Yes, I do.</p> <p>17 Q. On June 30th, 2004?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. And what was your involvement in that incident?</p> <p>20 A. I was called as backup. I was on the A and B 21 side. This happened on the C and D side, and I was 22 called on the radio as backup. I responded. Officer 23 Stevens explained to me that, which I could see, that</p>
<p style="text-align: right;">102</p> <p>1 (Sidebar conference was concluded.)</p> <p>2 THE COURT: You may proceed when the reporter's 3 ready.</p> <p>4 MS. VAN DYKE: Thank you.</p> <p>5 BY MS. VAN DYKE:</p> <p>6 Q. Sergeant Phillips, are you familiar with Tyrone 7 Guinn?</p> <p>8 A. Yes, I am.</p> <p>9 Q. And how are you familiar with him?</p> <p>10 A. He has been housed in the SHU ever since I've 11 been back at DCC.</p> <p>12 Q. Okay. And do you know what building he was 13 located in June 30th, 2004?</p> <p>14 A. Yep, Building 19.</p> <p>15 Q. Okay. And could you please explain to the jury 16 what standard operating procedures apply with respect to 17 the inmates in Building 19 of the SHU?</p> <p>18 A. In Building 19 they are max inmates. Always 19 have two-man backup on the inmates at that time.</p> <p>20 Actually, now it's changed to three-man backup. At that 21 time it was two.</p> <p>22 They receive one-hour rec three times a week.</p>	<p>104</p> <p>1 Officer Shannon had just had feces thrown all over him. 2 And when I walked into the tier, I saw Officer Shannon 3 with feces dripping down from the back of his head, over 4 his face, onto his clothes. And Officer Stevens had on 5 his right -- back of his right leg feces on it, on the 6 clothes.</p> <p>7 Q. Okay. Was there feces anywhere else?</p> <p>8 A. Yes, there was feces hanging from the Yard 2, 9 which was where Inmate Guinn was, all over the floor and 10 all over the cell doors of 4 and 8.</p> <p>11 Q. Okay. You said there was feces all over Yard 12 2. Why on yard --</p> <p>13 A. Each yard in the building is surrounded by a 14 cage, kind of like a dog kennel cage. And it goes from 15 floor to ceiling. And it was hanging from the actual 16 cage itself, dripping down to the floor, just dripping 17 down.</p> <p>18 Q. Okay. How did you know what it was?</p> <p>19 A. It smelled like feces.</p> <p>20 Q. Okay. And were you certain of that?</p> <p>21 A. Absolutely.</p> <p>22 Q. Okay. Did you take any photographs with</p>

<p style="text-align: right;">109</p> <p>1 Q. Well, who was the fortunate person that got to 2 cleanup? Do you recall? Do you know that?</p> <p>3 A. Myself and a Sergeant Percheck acquired two 4 other inmates to cleanup the feces on the floor, the 5 cell doors, and the yard.</p> <p>6 Q. Okay. And do you know what procedure they had 7 to follow in order to cleanup something like that?</p> <p>8 A. We obtained biohazard suits, red evidence or 9 red biohazard bags that were provided by medical. Any 10 time you have a biohazard we get those bags to use. We 11 used bleach and water to mop everything down. After 12 everything was cleaned up, everything that we used was 13 put in red biohazard bags and sent to medical for them 14 to dispose of.</p> <p>15 Q. Okay.</p> <p>16 A. Which is their procedure.</p> <p>17 Q. The bag that you were just describing, the 18 biohazard red bag, was that the same bag?</p> <p>19 A. They were the same type, except on the 20 biohazard bags that we put the clothes in, we tagged 21 them with an evidence tag so we would know the evidence. 22 And that was taken out by Staff Lieutenant Rispoli, at 23 the time he was lieutenant, where the cleanup bags had</p>	<p style="text-align: right;">111</p> <p>1 THE COURT: Certainly.</p> <p>2 BY MS. VAN DYKE:</p> <p>3 Q. We've already talked about the clothing, 4 pictures. Do you recall seeing any type of container or 5 cup?</p> <p>6 A. There was, I believe it was a milk carton that 7 he had. It's been a while.</p> <p>8 Q. Did you actually see a milk container or 9 carton? If you don't recall --</p> <p>10 A. I don't recall, but I believe it was a milk 11 carton.</p> <p>12 Q. So that was not something that you collected?</p> <p>13 A. No, we were -- my personal concern at the time 14 was Inmate Guinn was in the interview room. He wasn't 15 going anywhere. And my concern was getting Officer 16 Shannon out of his clothes and making sure that Officer 17 Stevens' hand was seen by medical.</p> <p>18 MS. VAN DYKE: Okay. Thank you very much.</p> <p>19 Nothing else.</p> <p>20 MS. WALKER: Thank you, Your Honor.</p> <p>21 CROSS-EXAMINATION</p> <p>22 BY MS. WALKER:</p> <p>23 Q. Good afternoon, Sergeant.</p>
<p style="text-align: right;">110</p> <p>1 to be taken out of the building until later on that 2 night.</p> <p>3 Q. Now, there's been some discussion you haven't 4 been in the courtroom for in regards to the incident 5 reports that are created. You've already created an 6 incident report as well, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And there's been mention in Officer Shannon's 9 report as well as Officer Stevens' report that Inmate 10 Guinn had thrown the feces toward or at Inmate Hill. Is 11 that an assumption on your part, that the feces was 12 thrown at Inmate Hill?</p> <p>13 A. I have no idea who it would have been thrown 14 at. When we take the inmates out to rec, the officers 15 are with the inmates. So if you threw it in the 16 direction of an inmate, you're going to hit an officer.</p> <p>17 Q. And you were not present for the incident?</p> <p>18 A. No, I came in after the incident. After the 19 feces had been thrown, I was called.</p> <p>20 Q. And so you have no idea what the defendant's 21 intention was at the time that it happened?</p> <p>22 A. No.</p> <p>23 MS. VAN DYKE: May I have a moment, Your Honor?</p>	<p style="text-align: right;">112</p> <p>1 A. Good afternoon.</p> <p>2 Q. I think you already indicated to the jury that 3 you were not present when the alleged feces throwing 4 occurred. That's correct, right?</p> <p>5 A. That's correct. It was thrown by the time I 6 got to the scene. That's why I was called.</p> <p>7 Q. And you were called because you are a 8 supervisor?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. And you responded to assist your 11 officers, right, that's your job?</p> <p>12 A. That's correct.</p> <p>13 Q. And you were concerned about Officer Shannon 14 because he was in a state of shock?</p> <p>15 A. Correct.</p> <p>16 Q. And by the way, Officer Shannon was relatively 17 new to the job at the time, correct?</p> <p>18 A. I believe he had approximately four or five 19 months.</p> <p>20 Q. Okay. And was -- let me take that back. You 21 did file an incident report in this case, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And you collected some evidence in this case?</p>

	113		115
1	A. That's correct.	1	Q. Okay. So that's not intended to be a
2	Q. You indicated to the jury that you had	2	substance?
3	collected clothing, for example?	3	A. No.
4	A. That's correct.	4	Q. There's not a container of some kind?
5	Q. You also took some pictures?	5	A. Right.
6	A. That's correct.	6	Q. That's not contraband, to the best of your
7	Q. And you said that you arrived after the	7	knowledge?
8	incident, like within a minute or so?	8	A. I believe it was the --
9	A. That's correct, or less.	9	Q. Light?
10	Q. But after you arrived, you went and helped	10	A. The light from the floor or the light from the
11	Shannon and Stevens?	11	ceiling hitting on the floor.
12	A. Yes.	12	Q. How often would you say these floors are
13	Q. Okay. And about how long did that take, would	13	cleaned?
14	you say?	14	A. They're cleaned every night. We have inmate
15	A. Maybe five or 10 minutes just to get Officer	15	workers that come out every night and clean those
16	Shannon, and medical came down to see Officer Stevens.	16	floors.
17	Q. Were you present when medical saw them?	17	Q. Okay. And then the second picture, I can't
18	A. I was not present when medical saw Stevens. I	18	really see it. What is supposed to be the feces?
19	went with the captain that came down to move Inmate	19	A. The feces is on the wall to the -- what would
20	Guinn to the isolation unit.	20	be the left of the door on the wall here and on the
21	Q. So you did that as well, right, after taking	21	floor by the door. There's actually a lot of it by the
22	care of Officer Shannon?	22	door, the door track, under the door track, and the
23	A. That's correct.	23	walls are splattered.

	114		116
1	Q. And how long do you think that took you?	1	Q. Now, would the wall have been -- let's say I'm
2	A. Maybe five minutes.	2	between -- would you be between the wall and the fence
3	Q. Okay. So you'd say about 10 or 15 minutes that	3	if you were walking down the --
4	all took you?	4	A. Yes, the officer would have been on the right
5	A. Yes.	5	side of Inmate Guinn. Inmate Guinn would have been
6	Q. And then at some point you took pictures of the	6	closest to the wall. And our officer, Shannon, was next
7	scene, correct?	7	to the cage. I'm sorry. Inmate Hill would have been
8	A. That's correct.	8	closest to the wall. Inmate Guinn would have been in
9	Q. Okay.	9	the yard.
10	MS. WALKER: And, Your Honor, may I retrieve	10	Q. All right. So Officer Shannon and Officer
11	the photos?	11	Stevens were closest to the yard, to the best of your
12	THE COURT: Yes, you may move freely about the	12	knowledge?
13	courtroom.	13	A. That's correct.
14	MS. WALKER: Thank you.	14	Q. From what you understood. And Mr. Hill was to
15	BY MS. WALKER:	15	the left?
16	Q. All right. Since the jury's already seen this,	16	A. To the left, on the side of the wall.
17	I'd like to approach and show you, I guess they're	17	Q. Of the officer. And it's on the left-hand side
18	Exhibits 1 and 2 again and, specifically, Exhibit 2. I	18	that the feces hit the wall?
19	think you talked to the prosecutor about this, but I	19	A. Yes.
20	want to make sure that the jury understands. In the	20	Q. So it would have been more to Mr. Hill's left?
21	middle of the photo there's a very light --	21	A. It would have been -- it would have had to go
22	A. The white -- the white color in the picture is	22	past our officer to get to Inmate Hill.

	117		119
1	wall, correct?	1	you learned from Officer Stevens in your investigation
2	A. Yes.	2	that Mr. Guinn had thrown the feces at Mr. Hill. Is
3	Q. You also indicated that the -- that Officer	3	that correct? And there is more after that.
4	Stevens was bandaged up at the nurse's station or by the	4	A. That is what Officer Stevens told me.
5	nurse?	5	Q. Okay. But he also goes onto tell you that he
6	A. Correct.	6	missed Inmate Guinn and that it had hit both of the
7	Q. He received a band-aid, correct?	7	officers, correct?
8	A. I don't recall what they put on him.	8	A. That's what Officer Stevens told me, that he
9	Q. Okay. Do you have a copy of your incident	9	did not hit Hill. He hit both him and Shannon.
10	report with you?	10	Q. But he didn't come into you and say, This
11	A. Yes, I do.	11	inmate came and threw feces at me; he was honest in
12	Q. Okay. Could you take that out and take a look	12	telling you what he thought happened?
13	at it? You indicated in your report -- well, first of	13	A. Yes.
14	all, in your report do you mention that you can see, and	14	Q. You don't think he was dishonest, do you?
15	you can take your time to look at this, a container	15	A. No.
16	being involved at all?	16	Q. Now, you indicated that you took some pictures
17	A. No, the only evidence that I listed was clothes	17	and that you bagged up the clothes. And the clothes,
18	and pictures.	18	you wouldn't know what happened to them after Rispoli
19	Q. Okay. Thank you.	19	got to them, right?
20	And near the top of the report you do point out	20	A. Once I give them to Staff Lieutenant Rispoli,
21	that when you were -- well, first of all, this report	21	they're out of my hands. I have nothing else further to
22	was done as part of an investigation or, excuse me, as	22	do with the property as far as evidence goes. What
23	part of a procedure that the Department of Corrections	23	should have happened was it went to the hearing officer
	118		120
1	uses any time there's an incident?	1	until the hearing took place just in case he needed the
2	A. That's correct. Any time we have an incident	2	evidence as -- for the hearing that he would have had
3	or an inmate's going to receive disciplinary action, we	3	with Inmate Guinn.
4	do. Everybody that's involved in the incident does an	4	Q. Okay. Now, the -- you took some pictures. You
5	incident report.	5	took pictures of the feces on the ground and on the
6	Q. Okay. So not just criminal instances are	6	wall, right? And you took a photo, which the jury has
7	documented?	7	seen, of the little cut that he has on his hand,
8	A. No, an incident report can be for anything.	8	correct?
9	Q. And this incident report helped you in	9	A. That's correct.
10	internally disciplining Mr. Guinn?	10	Q. Did you take any pictures of the officers with
11	A. There's an incident report done and then	11	the feces on them and their clothes?
12	there's an disciplinary report done. The disciplinary	12	A. No, all we wanted to do is get Officer Shannon
13	report is forwarded to the hearing officer. The hearing	13	out of his clothes.
14	officer does the discipline from that report and the	14	Q. You wanted to get him out of it.
15	incident reports that are written.	15	And you didn't -- so you didn't actually see
16	Q. So to the best of your knowledge, Mr. Guinn was	16	the incident, correct?
17	disciplined?	17	A. I did not see the incident.
18	A. As far as I know. He went to isolation and	18	Q. And did you see Officer Stevens cuffing
19	then from there --	19	Mr. Guinn when he put him back in his cell?
20	Q. Do you know how long he was there?	20	A. Officer Guinn -- Inmate Guinn was in the
21	A. More than likely 15 days at least.	21	interview room when I arrived.
22	Q. Now, you also indicated near the top of the	22	Q. Okay. So you didn't see that. You also
23	report, like the sentence second I believe it is, that	23	indicated to the jury that there were inmates that were

<p style="text-align: right;">125</p> <p>1 Q. So he would have been put in isolation without 2 a hearing?</p> <p>3 A. Yes, they're put in -- on administrative 4 transfer in the beginning.</p> <p>5 Q. Okay.</p> <p>6 A. And then if -- if the hearing officer warrants 7 15 days isolation, then that time is credited to that -- 8 to that charge.</p> <p>9 Q. Okay. You indicated that Mr. Hill was put in 10 the shower as a precautionary measure?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have any idea where he was headed before 13 this incident occurred?</p> <p>14 A. He was actually going to the shower.</p> <p>15 Q. Okay. So he was already going there?</p> <p>16 A. Yes.</p> <p>17 MS. WALKER: Nothing further.</p> <p>18 MS. VAN DYKE: Your Honor, nothing further of 19 this witness.</p> <p>20 THE COURT: You may step down.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 THE COURT: Do you have another witness?</p> <p>23 MS. VAN DYKE: May we approach, Your Honor?</p>	<p style="text-align: right;">127</p> <p>1 case one way or another. Avoid contact with anyone in 2 this room. And, also, do not discuss this case with 3 anyone, even among yourselves. Do not discuss this case 4 with anyone.</p> <p>5 All right. Have a good evening.</p> <p>6 (Whereupon, jury leaves the room at 4:14 p.m.)</p> <p>7 THE COURT: I'm prepared at this time to 8 address the issue of whether or not these incident 9 reports are going to be admitted. Is that an 10 appropriate first order of business?</p> <p>11 MS. VAN DYKE: Sure, Your Honor.</p> <p>12 THE COURT: I'd like to ask counsel whether or 13 not Department of Corrections officers are considered 14 law enforcement personnel.</p> <p>15 MS. WALKER: They are, Your Honor. I concede 16 that.</p> <p>17 THE COURT: Well, if that is the case, then 18 even though these are reports, they don't fall within 19 the exception of 803(8) because the following are not 20 within the exception to the hearsay rule: investigative 21 reports by police or other law enforcement personnel. 22 Is it your argument these are not investigative reports?</p> <p>23 MS. WALKER: That is correct, Your Honor. To</p>
<p style="text-align: right;">126</p> <p>1 THE COURT: Yes.</p> <p>2 (Whereupon, the following sidebar conference 3 was held.)</p> <p>4 MS. VAN DYKE: At this point the State probably 5 may decide to close its case-in-chief. I would like 6 some time to do that, to think about whether or not I'm 7 going to do that at this point. Also, I think probably 8 a couple of issues have come up that I think I need to 9 address before I can make that decision, and I don't 10 know if we can hopefully in the time we have left 11 address that with Your Honor. I don't know if it would 12 be a good time to dismiss the jury.</p> <p>13 THE COURT: All right. We'll dismiss the jury 14 for the day.</p> <p>15 MS. VAN DYKE: Thank you.</p> <p>16 (Sidebar conference was concluded.)</p> <p>17 THE COURT: Ladies and gentlemen, we have a few 18 issues that we need to address and so you are going to 19 be dismissed for the day. We will reconvene tomorrow 20 morning at 10 o'clock. The bailiff will instruct you 21 where and when to go.</p> <p>22 Again, please keep an open mind. Try as best</p>	<p style="text-align: right;">128</p> <p>1 me, the way I read that is that it would be an 2 investigative report for the purpose of the criminal 3 case. In this particular case, that wasn't -- that 4 wasn't what the purpose was they filled that out. They 5 filled it out as part of an incident report, whether 6 administratively or criminally. And it just so happens 7 that the State has it. They clearly weren't going to 8 use it in their case as investigative material. So I 9 believe that it wouldn't be -- wouldn't fall into that 10 category.</p> <p>11 THE COURT: Well, let's assume it doesn't. 12 It's still an out-of-court statement offered to prove 13 the truth of the matter asserted. So which exception do 14 you think it falls under again?</p> <p>15 MS. WALKER: Records regularly -- kept in the 16 regular course of business, Your Honor. They testified 17 that these are records that they actually authored 18 themselves that they use as part of administrative 19 procedures that are kept as part of the DCC records.</p> <p>20 THE COURT: Does the State have a position?</p> <p>21 MS. VAN DYKE: Your Honor, these are, in 22 essence, investigative reports. It's basically what --</p>

1 IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
 2 IN AND FOR NEW CASTLE COUNTY
 3 STATE OF DELAWARE, ID No. 0411013992
 4 Plaintiff,
 5 v.
 6 TYRONE L. GUINN,
 7 Defendant.
 8
 9 BEFORE: HONORABLE MARY M. JOHNSTON, J.
 10 and jury
 11 APPEARANCES:
 12 CARI VAN DYKE, ESQ.
 13 Deputy Attorney General
 14 for the State
 15 NICOLE WALKER, ESQ.
 16 for the Defendant
 17 TRIAL TRANSCRIPT
 18 MAY 20, 2005
 19
 20 JEANNE CAHILL, RMR, CRR
 21 SUPERIOR COURT OFFICIAL REPORTERS
 22 500 King Street - Wilmington, Delaware 19801
 23 (302) 255-0561

2
 1 May 20, 2005
 2 Courtroom No. 8E
 3 9:45 a.m.

3 PRESENT:

4 As noted.

5 -----
 6
 7 THE COURT: Good morning.
 8 Over last evening I'm sure you've all
 9 thought about these issues, as I have. I also
 10 looked for a pattern instruction on transferred
 11 intent, and was unable to find one. I have drafted
 12 something, should that end up being appropriate.
 13 MS. VAN DYKE: Your Honor, the State is not
 14 going to seek a transferred intent instruction.

15 THE COURT: All right.

16 MS. VAN DYKE: That kind of closes that
 17 issue.

18 THE COURT: All right. So you're going to
 19 rely on the proof of the intent to assault the law
 20 enforcement officers?

21 MS. VAN DYKE: Yes.

22 THE COURT: And what about the defense
 23 asking for any --

3
 1 MS. WALKER: Well, Your Honor, if she relies
 2 solely on that, they either have to believe that he
 3 intended to hit that officer to find him guilty of
 4 that, or he's not guilty at all, so there would be
 5 no offensive touching at all.

6 THE COURT: So you're not asking for that?
 7 MS. VAN DYKE: You still have to prove
 8 intent on an offensive touching, so it's not a
 9 lesser-included.

10 I'm sorry this couldn't be decided
 11 yesterday.

12 THE COURT: That's all right. It was
 13 certainly interesting for me to research it,
 14 anyway.

15 MS. VAN DYKE: I think it's going to have
 16 the Legislature rolling.

17 MS. WALKER: They're probably down there
 18 right now. That's what I was afraid of.

19 THE COURT: It is interesting. And it is an
 20 issue of first impression. I do think that it's
 21 pretty clear. You cannot use transferred intent to
 22 escalate and add a new element to a charge. I
 23 think that's pretty clear.

4
 1 MS. WALKER: This is kind of backward.
 2 Usually, the State is trying to get transferred
 3 intent.

4 MS. VAN DYKE: I know.

5 THE COURT: Was there anything else about
 6 these instructions that we need to go over?

7 MS. VAN DYKE: Actually, my first name is
 8 spelled wrong.

9 THE COURT: How is it spelled?

10 MS. VAN DYKE: It's C-A-R-I. Not the
 11 typical spelling.

12 MS. WALKER: The Court already indicated the
 13 "Office of the Public Defender" is coming out.

14 THE COURT: Yes.

15 MS. WALKER: The only other thing that I
 16 noted is whether defendant's election to testify
 17 goes in. And if we could, after the State rests,
 18 which I believe they're going to do, and after we
 19 have arguments with regard to -- I'd like to put on

20 the record officially my motions for judgment of
 21 acquittal, if I could have an opportunity to talk
 22 to my client one last time.

23 THE COURT: Normally what I do is put it in

<p style="text-align: center;">13</p> <p>1 Court.</p> <p>2 Your Honor, I'd like to deal with the first</p> <p>3 two counts, which I think would be based on the</p> <p>4 same conduct. The State has to establish a prima</p> <p>5 facie case that my client intentionally hit a</p> <p>6 Correctional officer and intended to hit a</p> <p>7 Correctional officer with the feces.</p> <p>8 There is no argument that there was feces</p> <p>9 involved here. At this point, I think they may</p> <p>10 have established a prima facie case that my client</p> <p>11 is the one that threw it, even though nobody saw</p> <p>12 it. I think that the jury could infer that he was</p> <p>13 the only one there; that he hit them.</p> <p>14 However, the only testimony with respect to</p> <p>15 intent that was elicited was that he, my client,</p> <p>16 intended to hit Mr. Hill and not the Corrections</p> <p>17 officer. None of them -- No evidence was placed on</p> <p>18 the record that he intended to hit the Corrections</p> <p>19 officer. It's not there.</p> <p>20 Even if we don't -- the jury doesn't accept</p> <p>21 their conclusions that Miss Van Dyke is going to</p> <p>22 say, that's all it was, was a conclusory statement</p> <p>23 by the CO's, if they take that out, then there is</p>	<p style="text-align: center;">15</p> <p>1 with them at all. And in fact, they said he</p> <p>2 cooperated in getting cuffed. However, he didn't</p> <p>3 cooperate in being unhandcuffed.</p> <p>4 The officer also testified, Your Honor, that</p> <p>5 when they put them in the cell to uncuff them, they</p> <p>6 are turned away from them, and they uncuff the one,</p> <p>7 which is what he said happened here, and they turn</p> <p>8 around and uncuff the other.</p> <p>9 For all we know, Your Honor, that's all that</p> <p>10 happened, and he pulled away in that respect.</p> <p>11 Because nothing was presented that there was intent</p> <p>12 on his part to pull in, to shake the handcuffs as a</p> <p>13 weapon, to, you know, go in and get some other</p> <p>14 weapon and try to hurt the officer.</p> <p>15 So again, Your Honor, in both cases, this</p> <p>16 comes down to intent. And in both cases, all three</p> <p>17 cases, I should say, the State has failed to</p> <p>18 present any evidence, any evidence, of intent by my</p> <p>19 client to either strike Corrections officers or to</p> <p>20 hurt or cause physical injury to an officer.</p> <p>21 Therefore, Your Honor, I'm asking for a</p> <p>22 judgment of acquittal on all three charges.</p> <p>23 MS. VAN DYKE: Your Honor, the State would</p>
<p style="text-align: center;">14</p> <p>1 nothing, there is no intent.</p> <p>2 For all we know, my client could have been</p> <p>3 in there just throwing the feces, not knowing</p> <p>4 anybody was going to be coming up the walkway as</p> <p>5 they were walking down.</p> <p>6 No intent has been established at all or</p> <p>7 presented to the Court with respect to those two</p> <p>8 charges. So I clearly think that they haven't even</p> <p>9 put forth a prima facie case with respect to that</p> <p>10 element of the offense.</p> <p>11 Now, on the third count, Your Honor, the</p> <p>12 State has to establish a prima facie case that it</p> <p>13 was my client's conscious object to cause physical</p> <p>14 injury to the officer, Corrections officer.</p> <p>15 Again, the only evidence that was presented</p> <p>16 is the testimony of Officer Stevens that when he</p> <p>17 went to take the cuffs off of my client, he pulled</p> <p>18 away. And that's how -- and he hung onto the cuffs</p> <p>19 because he was doing his job.</p> <p>20 He didn't indicate my client pulled away</p> <p>21 because he was trying to get away from the</p> <p>22 officers. He didn't testify that. In fact, he</p>	<p style="text-align: center;">16</p> <p>1 request that you deny that motion. The standard of</p> <p>2 review the Court must consider is the evidence at</p> <p>3 this point must be viewed in the light most</p> <p>4 favorable to the State.</p> <p>5 The State presented evidence of the two</p> <p>6 alleged victims in this case, Correctional Officer</p> <p>7 Shannon and Correctional Officer Stevens.</p> <p>8 As far as the defendant being the person</p> <p>9 that committed the crimes, he's the only person in</p> <p>10 the Yard 2. There is evidence that he was seen</p> <p>11 holding a container, and there was feces all over</p> <p>12 the fence of the yard in which he was contained.</p> <p>13 As far as intent to hit the Correctional</p> <p>14 officers, that intent can be inferred, and that is</p> <p>15 a decision for the jury to grapple with.</p> <p>16 Based upon the surrounding circumstances,</p> <p>17 the close proximity that the victims were to the</p> <p>18 defendant's recreation yard, the fact that Ernest</p> <p>19 Hill, his alleged intended victim, is next to them</p> <p>20 and he is not the closest person to the recreation</p> <p>21 yard, this was a calculated plan, obviously.</p> <p>22 This was something he had to think about</p>

<p style="text-align: center;">17</p> <p>1 it intentionally at the victims. So the State does 2 believe that there is an inference that can be 3 drawn by the jury.</p> <p>4 And as to Count III, it is the defendant's 5 actions that caused the injury. It is clear from 6 Officer Stevens' testimony that the defendant's 7 sudden movement caused him concern for safety, and 8 that he needed to make sure those cuffs were back 9 on the inmate. The inmate continued to struggle, 10 and that resulted in the injury.</p> <p>11 Given all that, Your Honor, the State 12 believes at this point, if the Court views the 13 evidence in the light most favorable to the State, 14 the motion should be denied.</p> <p>15 Thank you.</p> <p>16 MS. WALKER: May I respond?</p> <p>17 THE COURT: Yes.</p> <p>18 MS. WALKER: With respect to Miss Van Dyke's 19 statement that the evidence has to be viewed in the 20 light most favorable to the State, she is 21 absolutely right, but they have to present evidence 22 for it to be viewed in the light most favorable to 23 that, and they haven't done that.</p>	<p style="text-align: center;">19</p> <p>1 and there was testimony that his behavior deviated 2 from the normal procedure.</p> <p>3 And, therefore, I think the State has 4 established a prima facie case for purposes of this 5 motion. So the motion for judgment of acquittal is 6 denied as to Count III.</p> <p>7 With regard to Counts I and II, the question 8 is intent. I do agree that there is certainly a 9 question of fact raised even by the State's own 10 witnesses with regard to specific intent. However, 11 I think that under the circumstances, the intent 12 may be conferred from the proximity of the guards 13 to Inmate Hill and also the nature of the conduct 14 itself.</p> <p>15 So there, the State has presented sufficient 16 evidence to survive a motion for judgment of 17 acquittal, so the motion is denied as to Counts I 18 and II as well.</p> <p>19 Is there anything else we need to discuss 20 before we bring the jury in?</p> <p>21 MS. VAN DYKE: No, Your Honor.</p> <p>22 MS. WALKER: No, Your Honor.</p> <p>23 THE COURT: All right.</p>
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<p style="text-align: center;">18</p> <p>1 The intent in this case is specific intent 2 to hit a Corrections officer.</p> <p>3 The sudden movement, there was no testimony 4 by the officer that he made a sudden movement and 5 that's what caused his cut. And everything he 6 testified to, it was because my client pulled away. 7 We have no idea why he pulled away. Nothing was 8 put into evidence regarding intent.</p> <p>9 She also indicated it was planned and 10 calculated by my client to gather up his feces and 11 hit the officer. It may have been calculated and 12 planned to throw feces somewhere or do something 13 with it, but she has established no evidence of 14 calculation and planning.</p> <p>15 THE COURT: All right. My ruling is as 16 follows: I do think that intent is a classic 17 factual question which should go to the jury. The 18 question is whether the State has established a 19 prima facie case.</p> <p>20 With regard to Count III, the question is 21 whether it was the conscious object to cause 22 physical injury. There has been testimony that the</p>	<p style="text-align: center;">20</p> <p>1 MS. WALKER: Your Honor, there is one more 2 thing that I did want to address, and that is in 3 discussing with my client the evidence presented 4 and not presented by the State and explaining to 5 him his right to testify or not testify, he has 6 chosen not to testify in this case. Therefore, I 7 think the instruction as contained in the jury 8 instruction should remain.</p> <p>9 THE COURT: All right. If the defendant 10 could please rise, we'll conduct that colloquy now.</p> <p>11 MS. VAN DYKE: Your Honor, are they bringing 12 in the jury?</p> <p>13 THE COURT: Yes. We'll have to stop them 14 when they get to the door.</p> <p>15 Could the investigating officer tell them?</p> <p>16 MS. WALKER: Thanks.</p> <p>17 THE COURT: Mr. Guinn, your counsel has 18 informed the Court that it is your present 19 intention not to testify. Is that correct?</p> <p>20 THE DEFENDANT: Yes, ma'am.</p> <p>21 THE COURT: Within the last 24 hours, have 22 you taken any intoxicating substances, any drugs or</p>
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<p>89</p> <p>1 the nurse?</p> <p>2 A. I did. Yes, ma'am.</p> <p>3 Q. Is that standard procedure?</p> <p>4 A. Yes, ma'am, for injury with any contact with</p> <p>5 inmates.</p> <p>6 Q. That makes sense.</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. Do you recall telling the nurse that you got</p> <p>9 your hand cut trying to put cuffs on an inmate?</p> <p>10 A. Trying to put them on him? No.</p> <p>11 Q. Would a more accurate statement be I got my</p> <p>12 hand cut trying to uncuff an inmate?</p> <p>13 A. Somewhere in between there, in between the two,</p> <p>14 yes, ma'am.</p> <p>15 Q. Okay. So if that was put in a nurse's report,</p> <p>16 that would be inaccurate?</p> <p>17 A. What? What would be inaccurate?</p> <p>18 Q. If it says I got my hand cut trying to put</p> <p>19 cuffs on an inmate, that would be inaccurate?</p> <p>20 A. I don't recall if she even asked, to be honest</p> <p>21 with you.</p> <p>22 Q. Okay. Did she make -- excuse me. Do you</p> <p>23 recall discussing with her the fact that you had feces</p>	<p>91</p> <p>1 respect to disciplinary actions that occur at prison?</p> <p>2 A. Any incident, ma'am.</p> <p>3 Q. Any incident?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. So not just criminal matters?</p> <p>6 A. No.</p> <p>7 Q. And that's -- have you been taught that that's</p> <p>8 the standard procedure?</p> <p>9 A. For any incident?</p> <p>10 Q. Yes.</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. Okay. And what happens after you write up the</p> <p>13 incident report?</p> <p>14 A. You refer it to your supervisor.</p> <p>15 Q. And do you turn it into them?</p> <p>16 A. It's done through a computer. You refer it to</p> <p>17 them, and I don't know where it goes from there, to be</p> <p>18 honest with you.</p> <p>19 Q. And you receive a copy of it?</p> <p>20 A. Most of the time. Yes, ma'am.</p> <p>21 Q. You have a copy of this one?</p> <p>22 A. Yes, ma'am. I do.</p> <p>23 Q. Okay. And you've had a chance to look it over</p>
<p>90</p> <p>1 on you?</p> <p>2 A. No, ma'am.</p> <p>3 Q. Okay. But you indicated to the jury that you</p> <p>4 had an open wound. Is that correct?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. And that there was -- the -- to the best of</p> <p>7 your knowledge, it was on your pant leg, correct?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. But it had splattered different places,</p> <p>10 correct?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. And when you testified earlier that they put</p> <p>13 antibiotic on you and patched you up, they gave you a</p> <p>14 band-aid, correct?</p> <p>15 A. Yeah, that's it.</p> <p>16 Q. And you were able to return to work that time?</p> <p>17 A. That evening.</p> <p>18 Q. In fact, you worked overtime?</p> <p>19 A. Yeah, that was my overtime shift.</p> <p>20 Q. That was your overtime.</p> <p>21 A. Kind of wish I didn't now, though.</p> <p>22 Q. Okay. And the incident report that you filled</p>	<p>92</p> <p>1 and it's truthful and accurate, to the best of your</p> <p>2 knowledge?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. And to the best of your knowledge, that is</p> <p>5 exactly what you wrote in your report?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Okay.</p> <p>8 MS. WALKER: Your Honor, at this time I move to</p> <p>9 enter the incident report into evidence.</p> <p>10 THE COURT: I'll hold that decision in</p> <p>11 abeyance.</p> <p>12 MS. WALKER: Thank you.</p> <p>13 BY MS. WALKER:</p> <p>14 Q. One more thing. You also indicated that</p> <p>15 Mr. Guinn took a container and threw the liquid,</p> <p>16 correct?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. You didn't say peanut butter jug?</p> <p>19 A. No, ma'am. It was similar to a peanut butter</p> <p>20 jug is what it looked like.</p> <p>21 Q. You didn't go get it to examine exactly what it</p> <p>22 was?</p>

<p style="text-align: right;">69</p> <p>1 Q. Did you actually see Tyrone Guinn throw 2 anything? 3 A. No, ma'am. 4 Q. Okay. Do you recall whether or not Ernest 5 Hill, the other inmate that you were escorting, whether 6 or not he had any feces/urine on him? 7 A. I do not recall. I don't believe so. 8 Q. How far away would you say Officer Shannon was 9 from the recreation yard? 10 A. Well, on the walkway, I mean, there's only 11 maybe a space of four-feet wide to walk in between the 12 wall and the yard fence. So not far. 13 Q. Okay. Do you recall seeing Inmate Guinn in the 14 yard? 15 A. Yes, ma'am. 16 Q. Okay. Do you remember seeing him at any 17 particular location at any time in the yard? 18 A. All over it pretty much. 19 Q. How about when you were escorting Ernest Hill, 20 did you take any particular -- pay any particular 21 attention to Tyrone Guinn at that point? 22 A. Not until after the incident. I looked up, and 23 he was maybe three or four feet back from the fence.</p>	<p style="text-align: right;">71</p> <p>1 take him out of the yard. 2 Q. Okay. And he was compliant in doing that? 3 A. Yes, he was compliant. 4 Q. And meanwhile, where is Officer Shannon? 5 A. Shannon, Officer Shannon, had come back to me. 6 Q. Okay. So he had to actually go on his own with 7 Inmate Hill? 8 A. It was only a couple more steps from where they 9 were at. 10 Q. Okay. And was there any necessity as to why 11 you needed to cuff Tyrone Guinn at that time? 12 A. It's just better to take care of a situation 13 right away if you can. 14 Q. Why is that? 15 A. This way he doesn't have time to do something 16 else. 17 Q. You said that he was compliant in cuffing him. 18 What was your next step at that point? 19 A. To take him out of the yard and place him back 20 in his cell. 21 Q. And where is his cell in relation to the yard? 22 A. Straight across, pretty much. 23 Q. And was Officer Shannon back with you?</p>
<p style="text-align: right;">70</p> <p>1 Q. Okay. Three or four feet back from the fence? 2 A. Yes, ma'am. 3 Q. Did he have anything in his hand? 4 A. The container. 5 Q. Could you tell the jury what your observations 6 were of Officer Shannon, like the way he responded to 7 what happened? 8 A. Mr. Shannon was -- he was in complete shock. I 9 mean, he was just in complete shock, probably denial 10 that he had feces and urine on his face and running -- 11 dripping down his ears and hair. 12 Q. And what about you, what were you thinking at 13 that time? 14 A. I felt bad for him. 15 Q. What was the thought that you had at that point 16 once you realized the incident occurred? What did you 17 do next? 18 A. I told Mr. Shannon to take Mr. Hill to the 19 shower, secured him in there, and then I told Mr. Guinn 20 to cuff up. And he did. 21 Q. What does "cuff up" mean? 22 A. Back up to the flap on the yard, place his 23 hands out of it, and let me handcuff him so that we can</p>	<p style="text-align: right;">72</p> <p>1 A. Yes, ma'am. 2 Q. Okay. And how -- could you explain to the jury 3 the process that you went through to get Tyrone Guinn 4 back into his cell? 5 A. I cuffed him at the flap in the yard. Removed 6 him from the yard. Brought him back to his cell. When 7 we bring him back to his cell, went to take one cuff 8 off, and he pulled away. As soon as he pulled away, 9 just restrained him. Took him down. Put the cuff back 10 on his right wrist, and then removed him from the cell, 11 and brought him out to the interview room. 12 Q. You said "he." When you started to take the 13 cuff off of his one hand, is this occurring while he's 14 inside his cell? 15 A. Yes, ma'am. He's at the cell, and the door's 16 maybe open this much. 17 Q. Okay. You're able to get in through that door? 18 A. I am? Yes, ma'am. 19 Q. With Tyrone Guinn? 20 A. Yes, ma'am. 21 Q. Okay. And you say he pulls away. Well, if 22 you're undoing the cuff, could you describe how he 23 pulled away?</p>

<p style="text-align: right;">61</p> <p>1 Q. And what does the academy involve? Is that the 2 two- to three-month program?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. Okay. Nothing in addition to that?</p> <p>5 A. No, ma'am.</p> <p>6 Q. And do you recall what shift you were working 7 on June 30th, 2004?</p> <p>8 A. 4 to 12 as overtime.</p> <p>9 Q. What do you mean by "overtime"?</p> <p>10 A. I went in at 4, the 30th, and got off at 8 11 o'clock in the morning the next day.</p> <p>12 Q. Okay. So you worked more than 4 to 12?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. The normal shift would be from 4 to 12 and then 15 you worked beyond that?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. Okay. Is the 4 to 12 shift usually your shift 18 or do you have -- does --</p> <p>19 A. I was on the shift for two and a half years, 20 and then I've done my past two years on 12 to 8.</p> <p>21 Q. 12 midnight to 8 a.m. is your current shift?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. Okay. And what were your responsibilities for</p>	<p style="text-align: right;">63</p> <p>1 A. Just daily routine. I mean, I know him as an 2 inmate.</p> <p>3 Q. You know him as an inmate?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. Okay. And could you tell us on June 30, 2004, 6 where he was located, where his cell was located amongst 7 the tiers?</p> <p>8 A. I believe he was lower 9.</p> <p>9 Q. Okay. So the lower level?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. The first level?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. And that's the same level that has 12 cells?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. And you believe he was in 9?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. And do you recall any point in time when Tyrone 18 Guinn on that specific date was removed from Cell 9?</p> <p>19 A. Yes, he was removed from the cell and put into 20 Yard 2.</p> <p>21 Q. Okay. And is Yard 2 directly across from Cell 22 9?</p> <p>23 A. Yes, ma'am.</p>
<p style="text-align: right;">62</p> <p>1 the shift on June 30th, 2004, the 4 to 12?</p> <p>2 A. Feeding, recreation, I believe laundry that 3 day, then just routine checks.</p> <p>4 Q. Okay. Did you have a partner on that shift?</p> <p>5 A. Yes, I did.</p> <p>6 Q. And who was that?</p> <p>7 A. Officer Shannon.</p> <p>8 Q. Now, is he your regular partner or --</p> <p>9 A. No, ma'am.</p> <p>10 Q. Okay. Do you have a regular partner or do you 11 always switch up?</p> <p>12 A. Normally switch up.</p> <p>13 Q. Do you recall how many cells -- I had a diagram 14 earlier. You can probably still see it on that wall 15 over there. How many inmate cells are in the tiers?</p> <p>16 A. Total of 25.</p> <p>17 Q. Okay.</p> <p>18 A. 12 downstairs, 12 upstairs, and also a handicap 19 cell.</p> <p>20 Q. Okay. Could you tell us on -- where was -- 21 well, do you know Tyrone Guinn?</p> <p>22 A. Do I know him? Yes, I know him.</p>	<p style="text-align: right;">64</p> <p>1 Q. Do you recall, and if you don't recall, you 2 don't need to guess, but do you recall the approximate 3 time of when he was removed from his Cell No. 9 to Yard 4 No. 2?</p> <p>5 A. I'd say approximately between 4:30 p.m. and 6 5 p.m.</p> <p>7 Q. And how did you go about removing him from his 8 cell into the yard?</p> <p>9 A. He's handcuffed at his cell door, then taken 10 into the yard. The yard door is shut. Then he's 11 uncuffed from inside the yard.</p> <p>12 Q. Okay. And how do you accomplish the uncuffing 13 in the yard?</p> <p>14 A. There's a flap on the yard fence where he 15 places his hands, and you take the cuffs off.</p> <p>16 Q. Okay. And do you recall on that specific date 17 whether or not Inmate Tyrone Guinn had any personal 18 items with him?</p> <p>19 A. Not that I knew of at the time.</p> <p>20 Q. Okay. You don't recall whether or not he was 21 carrying anything in addition to just his regular 22 uniform, had his uniform on and that was it, that was</p>

<p>21</p> <p>1 Q. Are you permitted to carry any weapons of any 2 sort? 3 A. No. 4 Q. Do you have any means of protection that you're 5 able to carry? 6 A. Well, other than Capstone and just handcuffs, 7 but at the time I -- it wasn't issued for everyone to 8 have caps at the time. So I didn't have caps on. 9 Q. So on June 30th you did not have caps on? 10 A. No. 11 Q. So, first, could you please explain to the jury 12 what that is? 13 A. Capstones, in other words, it's pepper spray, a 14 strong liquid made from -- it's like a direct solution 15 from cayenne peppers that can easily just swell up the 16 face or, you know, kind of -- well, basically blind a 17 person. You know what I'm saying? Not too much to 18 where they lose sight, but it's very irritating. 19 Q. Okay. Were you aware of whether or not Officer 20 Neil Stevens had -- 21 A. No, he didn't. 22 Q. He did not either. Okay. 23 Was there any particular routine as far as what</p>	<p>23</p> <p>1 recreation? 2 A. Yes, he did. 3 Q. Okay. Do you recall around what time? 4 A. Probably around -- 5 Q. If you can't remember -- 6 A. I can't remember. I don't want to. 7 Q. But it was during your shift which was from 4 8 to midnight? 9 A. Yes, yes. 10 Q. Okay. And do you see Tyrone Guinn in the 11 courtroom today? 12 A. Yes. 13 Q. Could you please point him out, describe an 14 article of clothing that he's wearing? 15 A. He's sitting right there with the grayish-green 16 kind of shirt on. 17 MS. VAN DYKE: Okay. Let the record reflect 18 the witness has identified the defendant, Tyrone Guinn. 19 BY MS. VAN DYKE: 20 Q. Okay. And when you took him out for recreation 21 on June 30th, 2004, what procedure did you follow and 22 who did you follow it with? 23 A. Just basically when me and Officer Stevens took</p>
<p>22</p> <p>1 inmates came out at a certain time on that date, what 2 inmates went to the yard? 3 A. Yes, it's a rotation that we have. Sometimes 4 inmates start out -- it usually starts out two cells. 5 Usually we'll start at usually 1 or 2 for that day or 6 the next day we'll start at 3 or 4. So if we have, 7 like, if we're having recreation for cells 7 to 12, 8 we'll start out either with 7, 8, and then tomorrow will 9 probably be 8 or 9 or tomorrow will be 10 or 11. So for 10 that day it was 9 and 10. 11 Q. Okay. And what -- you said you do know Tyrone 12 Guinn? 13 A. Uh-hmm. 14 Q. How do you know him? 15 A. I just know him as an inmate that was housed 16 that I used to work regularly over in Building 19. 17 Q. Okay. And do you recall having contact with 18 him as an inmate on June 30th, 2004? 19 A. Other than the incident, it was merely just 20 business. Anything -- like if I asked for did he want 21 to go out for recreation or showers or anything like 22 that, nothing more than that. 23 Q. Do you recall whether or not he did go to</p>	<p>24</p> <p>1 him out, had him handcuffed behind. He had his usual, 2 had the bag with his clothing, all the clothes, 3 whatever, and that was about it. And we took him to 4 Yard 2, placed him in there. 5 Q. So when you went out to recreation -- or do you 6 recall whether he went to Recreation Yard 1 or 2 on the 7 interior? 8 A. Yard 2 on the interior. 9 Q. Yard 2 on the interior? 10 A. Yes. 11 Q. So that's right near, right across from his 12 cell? 13 A. Yes. 14 Q. And you said he had a bag of clothing? 15 A. Yes. 16 Q. Okay. Could you please describe what the 17 typical uniform or jumpsuit is for a prison or inmate? 18 A. Well, usually it's an orange jumpsuit that they 19 like to wear, orange sweatshirts, because it usually 20 gets cold on a tier. Sometimes they get a combination 21 of both. And they carry out their boxers, socks, 22 t-shirt, or whatever, and probably their shower shoes, 23 shower slippers.</p>

<p>1 used to clean up the mess, correct?</p> <p>2 A. That is correct.</p> <p>3 Q. So no officer had to get down on their hands</p> <p>4 and knees to clean this up, right?</p> <p>5 A. We had to be on the tier with them when they</p> <p>6 were doing it, especially because we had two out at the</p> <p>7 same time. I was on one side of one and Sergeant</p> <p>8 Percheck was on --</p> <p>9 Q. Okay. So you were supervising them?</p> <p>10 A. That's correct.</p> <p>11 Q. But you weren't cleaning the floor?</p> <p>12 A. We weren't swinging the mops, but we were</p> <p>13 there.</p> <p>14 Q. They were issued what you said is part of the</p> <p>15 standard operating procedures, biohazard suits?</p> <p>16 A. That's correct.</p> <p>17 Q. And you keep these on hand because these types</p> <p>18 of incidents occur, correct?</p> <p>19 A. Correct.</p> <p>20 MS. WALKER: I have nothing further.</p> <p>21 MS. VAN DYKE: May I? Thank you.</p> <p>22 REDIRECT EXAMINATION</p> <p>23 BY MS. VAN DYKE:</p>	<p>121</p> <p>1 hearing together. And then the hearing officer directs</p> <p>2 whatever discipline is going to be put in place, whether</p> <p>3 it be isolation, loss of all privileges, or confinement</p> <p>4 to quarters.</p> <p>5 Q. And do you have any specific knowledge in</p> <p>6 relation to Tyrone Guinn whether or not he had a</p> <p>7 hearing?</p> <p>8 A. No.</p> <p>9 Q. Okay. And not just speaking about Tyrone</p> <p>10 Guinn, but in other cases when there's a write-up or</p> <p>11 administrative hearing, is it also that on occasions</p> <p>12 that criminal charges are also filed?</p> <p>13 A. That's correct.</p> <p>14 Q. Who makes the decision to file criminal</p> <p>15 charges?</p> <p>16 A. I assume internal affairs or higher to the</p> <p>17 warden.</p> <p>18 Q. But with respect to this case, you're not sure</p> <p>19 who decided?</p> <p>20 A. I'm not sure who decided.</p> <p>21 Q. Okay. Now, did you personally observe -- you</p> <p>22 observed the feces on Officer Shannon?</p> <p>23 A. Yes.</p>
<p>122</p> <p>1 Q. You said you believe the defendant, Tyrone</p> <p>2 Guinn, spent 15 days in isolation?</p> <p>3 A. I believe that's typically -- when an incident</p> <p>4 happens, the inmate will go for 15 days of isolation,</p> <p>5 unless for some reason he gets out early, and I wouldn't</p> <p>6 have that.</p> <p>7 Q. Is there any other type of punishment that can</p> <p>8 be imposed?</p> <p>9 A. They can receive loss of all privileges, but it</p> <p>10 doesn't happen until the actual hearing officer conducts</p> <p>11 his hearing. They can receive loss of all privileges,</p> <p>12 confinement to quarters, and/or more time in isolation</p> <p>13 according to what the offense was.</p> <p>14 Q. Okay. And are these like administrative</p> <p>15 write-ups? I mean, how are these -- how do they get to</p> <p>16 the penalty or the punishment?</p> <p>17 A. When an inmate violates one of the rules that</p> <p>18 are in the housing rules, if they're written up for it,</p> <p>19 the write-up then goes to the hearing officer. The</p> <p>20 hearing officer hears it with the inmate there. The</p> <p>21 inmate gives their side of the story. The officer gives</p> <p>22 their side of the story from the report, or if the</p> <p>23 inmate elects to confront their accuser, they have a</p>	<p>124</p> <p>1 Q. Did you also observe it on Officer Stevens?</p> <p>2 A. On the back of his right leg.</p> <p>3 Q. Okay. And when you collected the uniforms, you</p> <p>4 noticed there was feces on the uniforms?</p> <p>5 A. That's correct.</p> <p>6 Q. Was there a lot?</p> <p>7 A. Yes.</p> <p>8 Q. Were you familiar with whether or not Ernest</p> <p>9 Hill was struck with feces?</p> <p>10 A. We checked Ernest Hill. Ernest Hill had no</p> <p>11 feces that we could see. We still took the precaution</p> <p>12 just in case and placed him in the shower so that he</p> <p>13 could take a shower.</p> <p>14 MS. VAN DYKE: Nothing further. Thank you.</p> <p>15 MS. WALKER: Couple questions, Your Honor.</p> <p>16 CROSS-EXAMINATION</p> <p>17 BY MS. WALKER:</p> <p>18 Q. You indicated to the prosecutor and to me that</p> <p>19 you believe Mr. Guinn received 15 days in isolation?</p> <p>20 A. Yes.</p> <p>21 Q. But you're not aware whether or not he</p> <p>22 eventually had a hearing, correct?</p> <p>23 A. Not that I recall.</p>

313 , 2005

N. M. WALKER

TYRONE L. GUINN,
Defendant Below,
Appellant,
v.

T. J. DONOVAN

STATE OF DELAWARE,
Plaintiff Below,
Appellee.

DF \$ 00.00

2005

1 Jul 13 Notice of appeal from the convictions and sentence imposed on 07/01/05 in the Superior Court in and for New Castle County, by Judge Johnston, in Cr. A. No. IN04111482, I.D. #0411013992, with designation of transcript. (served by hand 7/13/05) (mfm)

2 Jul 13 Directions to court reporter of proceedings below to be transcribed pursuant to Rule 9(e) by appellant. (service shown on court reporter by hand 7/13/05) (mfm)

3 Jul 15 Letter dated 7/15/05 from Chief Deputy Clerk to Kathleen Feldman, transcript is due to be filed by 8/22/05. (dlw)

4 Jul 15 Letter dated 7/15/05 from Chief Deputy Clerk to Nicole M. Walker, Esquire, requesting a copy of Judge Johnston's 7/1/05 sentencing order be filed to be attached to the notice of appeal upon her receipt. (dlw)

5 Jul 25 Letter dated 7/22/05 from Nicole M. Walker, Assistant Public Defender to Clerk, enclosing sentencing order being appealed. (service shown) (rdd)

6 Aug 24 Court reporter's final transcript log entry: Prothonotary received 8/17/05. (eas)

7 Aug 24 Letter dated 8/24/05 from Senior Court Clerk to Prothonotary, record is due to be filed by 8/31/05. (eas)

* 8 Aug 25 Record w/ transcript. (eas)

* 9 Aug 25 Brief schedule issued. (opening brief due 9/26/05) (eas)

* 10 Sep 23 Appellant's opening brief and appendix. (served by hand 9/23/05) (mjd)

* 11 Oct 18 Affidavit requesting to proceed pro se pursuant to Rule 26(d)(iii). (no service shown) (mjd)

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12 Oct 18 Directions to court reporter of proceedings below to be transcribed pursuant to Rule 9(e) by appellant. (no service shown on the court reporter) (mjd)

13 Oct 20 Letter dated 10/20/05 from Chief Deputy Clerk to Nicole M. Walker, Esquire, forwarding the appellant's documents filed on 10/17/05. (dlw)

14 Oct 26 Brief delinquency notice dated 10/26/05 from Clerk to appellee. (clh)

15 Oct 26 Motion for leave to file answering brief out of time by appellee. (served by hand 10/26/05) (mjd)

16 Oct 28 Additional transcript to be made part of the record. (eas)

17 Nov 01 Order dated 10/31/05 by Steele, C.J., appellee's answering brief is due 11/23/05 (afb).

18 Nov 18 Letter dated 11/15/05 from Tyrone Guinn to Court, regarding his appeal. (mjd)

19 Nov 22 Appellee's answering brief. (served by hand 11/22/05) (mjd)

20 Nov 22 Letter dated 11/22/05 from Assistant Clerk to Nicole M. Walker, Esq., forwarding Mr. Guinn's 11/15/05 letter for appropriate disposition (afb).

21 Nov 22 Notice dated 11-22-05 from Clerk to counsel, the case will be submitted for decision on briefs as of 12-21-05 (clh) (MTS,CB,JB)

* 22 Dec 05 Appellant's reply brief. (served by hand 12/5/05) (mfm)
2006

23 Feb 14 Letter dated 2/14/06 from Tyrone Guinn to Clerk, regarding his appeal. (eas)

24 Feb 14 Letter dated 2/14/06 from Senior Court Clerk to Nicole Walker, Esquire, forwarding Mr. Guinn's letter for appropriate disposition. (eas)

25 Feb 22 Letter dated 2/18/06 from Tyrone Guinn to Clerk, regarding his appeal. (eas)

26 Feb 22 Letter dated 2/22/06 from Senior Court Clerk to Nicole Walker, Esquire, forwarding Mr. Guinn's letter for appropriate disposition. (eas)

* 27 Feb 28 Order dated 2/28/06 by Steele, C.J., AFFIRMED. (MTS,CB,JB) (eas)

28 Mar 13 Letter dated 3/1/06 from Tyrone Guinn to Clerk, inquiring as to the status of his appeal. (docket sent) (eas)

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* 29 Mar 16

Record and mandate to clerk of court below. Case Closed
(afb).

30 Mar 20

Letter dated 3/11/06 from appellant to Clerk requesting
a copy of the docket sheet and the name of his counsel
(sent). (afb).

B-3

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

VS.

TYRONE L GUINN

Alias: See attached list of alias names.

DOB: 11/12/1984
SBI: 00375731

CASE NUMBER:
0411013992

CRIMINAL ACTION NUMBER:
IN04-11-1483
ASSLT DET FACIL(F)

SENTENCE ORDER

NOW THIS 1ST DAY OF JULY, 2005, IT IS THE ORDER OF THE COURT THAT:

The defendant is adjudged guilty of the offense(s) charged. The defendant is to pay the costs of prosecution and all statutory surcharges.

AS TO IN04-11-1483- : TIS
ASSLT DET FACIL

Effective July 1, 2005 the defendant is sentenced as follows:

- The defendant is placed in the custody of the Department of Correction for 8 year(s) at supervision level 5 with credit for 4 month(s) 12 day(s) previously served

- Suspended after serving 3 year(s) at supervision level 5

- For 3 year(s) supervision level 4 HALFWAY HOUSE

- Suspended after serving 1 year(s) at supervision level 4 HALFWAY HOUSE

- For 2 year(s) supervision level 3

- Hold at supervision level 5

APPROVED ORDER 1 August 4, 2005 12:08

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STATE OF DELAWARE
VS.
TYRONE L GUINN
DOB: 11/12/1984
SBI: 00375731

- Until space is available at supervision level 4 HALFWAY
HOUSE

The first 1 years of this sentence is a mandatory term
of incarceration pursuant to DE11 1254FD .

C -2



Y
PUBLIC DEFENDER OF THE STATE OF DELAWARE
ELBERT N. CARVEL STATE OFFICE BUILDING
820 NORTH FRENCH STREET, THIRD FLOOR
P.O. BOX 8911
WILMINGTON, DELAWARE 19801

LAWRENCE M. SULLIVAN
PUBLIC DEFENDER

ANGELO FALASCA
CHIEF DEPUTY

NICOLE M. WALKER
ASSISTANT PUBLIC DEFENDER

TELEPHONE
(302) 577-5121

March 16, 2005

Mr. Tyrone Guinn
SBI#375731
H.R.Y.C.I.
1301 East 12th Street
Wilmington, DE 19809

RE: State v. Tyrone Guinn
ID#0411013992

Dear Mr. Guinn:

This responds to your letter to our office dated March 4, 2005.

First, I have to say that I am puzzled by your concerns. I have already met with you by video on two occasions to discuss your case. Also, you did give me names of potential witnesses. As I told you I would do, I had those witnesses interviewed by my investigator and have issued the appropriate subpoenas. At no time did I say this would not help your case. I simply explained the different ways the jury may perceive this defense.

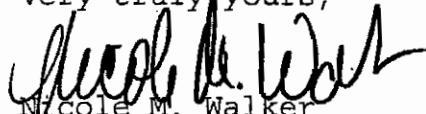
Second, we have discussed, during our video conferences, the discovery that I have received by the State on your behalf. You did not request this information from me on any occasion we have met. However, to address your concerns, I have enclosed it for you.

Finally, you may not have received my direct phone number simply because you had previously been assigned to another attorney and, thus, it was an oversight. You will find my number

at the top of this letter. However, you have sent me letters, which I reviewed immediately upon receipt.

If you have any further concerns regarding your case, as usual, I will be happy to discuss them.

Very truly yours,



Nicole M. Walker
Assistant Public Defender

MMW:dab

D-2

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE GUINN,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

§
§ No. 228, 2007

§
§ Court Below—Superior Court
§ of the State of Delaware
§ in and for New Castle County
§ Cr. ID No. 0411013992

Submitted: August 10, 2007
Decided: September 21, 2007

Before **HOLLAND, BERGER and JACOBS**, Justices

ORDER

This 21st day of September 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Tyrone Guinn, filed an appeal from the Superior Court's April 17, 2007 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In May 2005, Guinn was found guilty by a Superior Court jury of Assault in a Detention Facility. He was sentenced to 8 years of Level V incarceration, to be suspended after 3 years for 4 years of decreasing

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NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

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